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*Counsel to the Debtors and Debtors in Possession*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re:	)	
	)	Chapter 11
CELSIUS NETWORK LLC, <i>et al.</i> , <sup>1</sup>	)	
	)	Case No. 22-10964 (MG)
	)	
Debtors.	)	(Jointly Administered)
	)	

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**NOTICE OF FILING OF CONFIRMATION HEARING TRANSCRIPTS**

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**PLEASE TAKE NOTICE** that a hearing (the “CEL Token Hearing”) regarding the (i) the *Debtors’ Brief in Support of CEL Token Settlement* [Docket No. 3431]; and (ii) the *Brief of the Official Committee of Unsecured Creditors Regarding Legal Issues with Respect to the Treatment of CEL Token Under the Debtors’ Plan of Reorganization* [Docket No. 3432] was held on September 28, 2023. The CEL Token Hearing was held in a hybrid fashion both in person and via Zoom for Government before the Honorable Martin Glenn, Chief United States

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Celsius Network LLC (2148); Celsius KeyFi LLC (4414); Celsius Lending LLC (8417); Celsius Mining LLC (1387); Celsius Network Inc. (1219); Celsius Network Limited (8554); Celsius Networks Lending LLC (3390); Celsius US Holding LLC (7956); GK8 Ltd. (1209); GK8 UK Limited (0893); and GK8 USA LLC (9450). The location of Debtor Celsius Network LLC’s principal place of business and the Debtors’ service address in these chapter 11 cases is 50 Harrison Street, Suite 209F, Hoboken, New Jersey 07030.

Bankruptcy Judge, in the United States Bankruptcy Court for the Southern District of New York, in Courtroom No. 523, located at One Bowling Green, New York, New York 10004-1408.

**PLEASE TAKE FURTHER NOTICE** that the hearing (the “Confirmation Hearing”) regarding confirmation of the *Modified Joint Chapter 11 Plan of Reorganization of Celsius Network LLC and its Debtor Affiliates* [Docket No. 3577] (as modified, amended, or supplemented from time to time, the “Plan”) commenced on October 2, 2023 at 2:00 p.m., prevailing Eastern Time, continued on October 3, 2023, October 4, 2023, and October 16, 2023, October 17, 2023, and will continue on October 30, 2023 at 2:00 p.m., prevailing Eastern Time. Other than opening arguments, which were held in a hybrid fashion both in person and via Zoom for Government, the Confirmation Hearing was held in person before the Honorable Martin Glenn, Chief United States Bankruptcy Judge, in the United States Bankruptcy Court for the Southern District of New York, in Courtroom No. 523, located at One Bowling Green, New York, New York 10004-1408. Closing arguments will be held in a hybrid fashion both in person and via Zoom for Government.

**PLEASE TAKE FURTHER NOTICE** that the Court requested that the Debtors make available for the public the full transcripts for the CEL Token Hearing and the Confirmation Hearing.

**PLEASE TAKE FURTHER NOTICE** that attached hereto as Exhibits A, B, C, D, E, and F are true and correct copies of the transcripts for the CEL Token Hearing and each day of the Confirmation Hearing.

**PLEASE TAKE FURTHER NOTICE** that copies of the Plan, Disclosure Statement, and all pleadings filed in these chapter 11 cases may be obtained free of charge by visiting the website of Stretto at <https://cases.stretto.com/Celsius>. You may also obtain copies of the Plan,

Disclosure Statement, and other documents filed in these chapter 11 cases by visiting the Court's website at <http://www.nysb.uscourts.gov> in accordance with the procedures and fees set forth therein.

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New York, New York  
Dated: October 23, 2023

/s/ Joshua A. Sussberg

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**Exhibit A**

**September 28, 2023 Transcript (CEL Token Hearing)**

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 22-10964-mg

4 - - - - - x

5 In the Matter of:

6

7 CELSIUS NETWORK LLC,

8

9 Debtor.

10 - - - - - x

11

12 United States Bankruptcy Court

13 One Bowling Green

14 New York, NY 10004

15

16 September 28, 2023

17 10:01 AM

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20

21 B E F O R E :

22 HON MARTIN GLENN

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: JONATHAN

1 HEARING re Hybrid Hearing on CEL Token Legal Issues (To The  
2 Extent a CEL Token Resolution Event Has Not Occurred) .  
3 (Doc. ## 3356, 3360, 3412, 3431, 3432, 3433 to 3436, 3476,  
4 3528) .

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25 Transcribed by: Sonya Ledanski Hyde

1 A P P E A R A N C E S :

2

3 WHITE & CASE LLP

4 Attorneys for Official Committee of Unsecured Creditors

5 555 South Flower Street, Suite 2700

6 Los Angeles, CA 90071

7

8 BY: AARON COLODNY

9

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12 300 North LaSalle

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15 BY: CHRISTOPHER KOENIG

16

17 UNITED STATES SECURITIES AND EXCHANGE COMMISSION

18 Attorneys for the US SEC

19 100 F Street NE

20 Washington, D.C. 20549

21

22 BY: THERESE SCHEUER

23

24 OTIS DAVIS, Pro se

25

1 ARTUR ABREU, Pro se

2

3 ERIK MENDELSON, Pro se

4

5 JASON IOVINE, Pro se

6

7 ALSO PRESENT:

8 JASMINE ARMAND

9 DEAN LINDSAY CHAPMAN

10 CHRISTOPHER J. COCO

11 THOMAS DIFIORE

12 SCOTT DUFFY

13 SEAN ANDREW FEENER

14 MIRA HAQQANI

15 SAMUEL P. HERSHEY

16 JEFFREY S. KRAMER

17 NICHOLAS R. LOMBARDI

18 KEITH NOYES

19 CAITLIN O'CONNELL

20 GREGORY F. PESCE

21 MARK ROBINSON

22 ELIZABETH D. SCOTT

23 MICHAEL STANLEY

24 DAVID TURETSKY

25 CAROLINE WARREN

1 KEITH WOFFORD

2 ANDREW YOON

3 TANZILA ZOMO

4 UDAY GORREPATI

5 TAYLOR HARRISON

6 JEREMY HILL

7 MIKE LEGGE

8 VINCE SULLIVAN

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1 P R O C E E D I N G S

2 THE COURT: Good morning. Everybody please be  
3 seated. All right. We're here in Celsius 22-10964.

4 Mr. Koenig, good morning.

5 MR. KOENIG: good morning, Your Honor. For the  
6 record, Chris Koenig, Kirkland & Ellis, for the Debtors.

7 Your Honor, you know the case number by heart.

8 Your Honor, this status conference was initially  
9 scheduled as an argument on the legal issues for CEL token  
10 in the event that we did not have a settlement with the CEL  
11 token holders. As a reminder, our Chapter 11 plan includes  
12 a settlement for CEL token that values the token at 25 cents  
13 per CEL token.

14 At the disclosure statement hearing, you asked me  
15 who is the counterparty to the settlement. And I said,  
16 well, we're going to wait and see. We're going to see what  
17 creditors say about the plan. And as I'm sure Your Honor  
18 saw, we filed the voting report on Monday. The results were  
19 overwhelming. And if I can be candid, exceeded our wildest  
20 hopes and expectations.

21 Just a couple of numbers for the record. All  
22 accountholder classes entitled to vote voted to accept the  
23 plan by a very large margin. In the Earn class, which is  
24 our largest class of creditors, over \$2.4 billion in dollar  
25 amount voted on the plan out of a total of about \$4.2

1 billion total of Earn creditors. And of those voting, more  
2 than 99 percent by both number and dollar amount voted to  
3 accept the plan. The same holds true for the other  
4 accountholder Classes. In all of those, over 98 percent in  
5 number and 96 percent in dollar amount except for withhold,  
6 where one large no vote in a small class brought the dollar  
7 amount down a bit.

8 And that level of support continued for CEL token  
9 holders, too. We separately examined ballots of CEL token  
10 holders and ran the calculations as if they were a separate  
11 class. With almost 37,000 CEL token holders submitting  
12 ballots, 482 voted no. that's an acceptance rate of 98.71  
13 percent by number. We believe that the process worked as  
14 intended. The CEL token settlement was an open offer to CEL  
15 token holders, and the CEL token holders accepted that  
16 offer.

17 As we disclosed at the prior discovery conference  
18 on this topic, we signed two formal settlement agreements  
19 with Mr. (indiscernible) and Mr. Wiles, who are two of the  
20 very large CEL token holders who have been litigating this  
21 issue throughout these cases.

22 The lack of objections to the plan bear this out,  
23 too. There was one formal objection that was filed by Mr.  
24 Otis Davis. There was one letter that was submitted. This  
25 is in stark contrast to the dozens of letters that Your



1 Honor received on this topic in the past.

2 So our position is that the CEL token settlement  
3 has been overwhelmingly accepted as part of the plan and the  
4 CEL token settlement should be approved as part of  
5 confirmation next week. That's how Chapter 11 plans work.  
6 Creditors have the right to vote on their treatment, and  
7 dissenting creditors get dragged along. Unanimity is not  
8 required.

9 THE COURT: Let me ask a couple of questions.

10 MR. KOENIG: Sure.

11 THE COURT: So not everybody has signed on the  
12 settlement.

13 MR. KOENIG: Sure.

14 THE COURT: Can 9019 settlement bind non-settling  
15 -- people who have not agreed to settle?

16 MR. KOENIG: I think if we file this as a separate  
17 9019 motion, that might be challenging. But this is a  
18 Chapter 11 --

19 THE COURT: Let me just go through a series of  
20 questions.

21 MR. KOENIG: I understand.

22 THE COURT: But you agree that in terms of the  
23 9019, only those parties who have agreed are bound by this  
24 settlement per say.

25 MR. KOENIG: Pursuant to Bankruptcy Rule 9019, I

1 agree.

2 THE COURT: Okay. The plan proposes a treatment  
3 of 25 cents for CEL token holders, correct?

4 MR. KOENIG: Yes, Your Honor.

5 THE COURT: All right. There is no single class  
6 of CEL token holders. They are spread among a number of  
7 classes, of accepting classes.

8 MR. KOENIG: Yes.

9 THE COURT: So it is the issue of -- become  
10 whether to the extent they object, for dissenting members of  
11 an accepting class, the question then becomes the best  
12 interest test; are they receiving at least as much as they  
13 would in a Chapter 7 liquidation. Is that about the  
14 analysis?

15 MR. KOENIG: I think that's right, Your Honor.

16 THE COURT: Because I sort of went back and forth  
17 in my own mind. And I haven't read the entire trial brief.  
18 I did look at parts of it last night. And I specifically  
19 looked at the CEL token portions of it. And it doesn't  
20 address this analysis.

21 So if I had a case where it didn't specifically  
22 deal with the treatment of CEL tokens, the issue would then  
23 become it seems to me in the claim objection process. You  
24 know, they filed claims and there's a contested matter  
25 whether CEL tokens are worth zero, 25 cents, eight dollars,

1 you pick a number. And that would be resolved as part of a  
2 claims resolution process. But just to kind of work this  
3 through in my mind, that doesn't seem to apply here because  
4 the plan proposes the treatment of 25 cents. And therefore,  
5 we fall into this best interest analysis. If they object --  
6 okay, who has the burden in the best interest analysis?

7 MR. KOENIG: The debtors. I believe the debtor  
8 has the burden by a preponderance of the evidence.

9 THE COURT: So I read -- again, not every page,  
10 but I looked at the expert the committee submitted, the  
11 report on CEL tokens. And maybe I missed something, but  
12 what I derived from that is the expert doesn't believe it's  
13 81 cents, but doesn't say what it is.

14 He's putting on evidence -- and I haven't made my  
15 mind up -- this is the analysis that the Court has to make.  
16 Okay. So assume for those dissenting class members who  
17 argue that the CEL token is worth more than 25 cents, what  
18 does the Court have to conclude? That the value of the CEL  
19 token does not exceed 25 cents. Is that a sufficient  
20 finding? I'm not saying that's -- okay. I'm just thinking  
21 out loud. Okay? Because -- so with respect to the CEL  
22 token, there are many issues. Is it a security? If it's a  
23 security, it's subordinated under 510. If it's  
24 subordinated, value zero. If it's not a security, what's  
25 the value of it?

1           Assuming that the objectors carry forward with  
2           objections, they're absolutely entitled to.

3           MR. KOENIG: Of course.

4           THE COURT: I'm just trying to understand what is  
5           it I'm going to hear. Because the only written expert  
6           report that I've seen so far says it's not 81 cents. Have I  
7           missed something?

8           MR. KOENIG: Your Honor, it's the committee's  
9           experts -- I'll let Mr. Colodny speak, but I don't believe  
10          that the expert report says it's 20 cents or 25 cents or  
11          anything other than it's not 81.

12          THE COURT: It says it's not 81 -- I looked. That  
13          was one of the things I was interested in seeing, what does  
14          the expert say.

15          MR. KOENIG: Right.

16          THE COURT: And he said it's not 81 cents.

17          MR. KOENIG: Right. I think, Your Honor, the  
18          standard would be for best interest whether the proper value  
19          of CEL token under a Chapter 7 liquidation would be higher  
20          than the value that is being given to CEL token holders  
21          under our plan.

22          THE COURT: I said the reverse. Basically is it -  
23          - does the court find based on the evidence presented that  
24          the value of the CEL token is equal to or less than 25  
25          cents. Because that's the treatment that's proposed in the

1 plan.

2 MR. KOENIG: Right. And I think it could even be,  
3 depending on the math -- and lawyer math is admittedly  
4 challenging. But as long as the plan will provide higher  
5 recovery for all creditors than under Chapter 7, that's our  
6 burden, that's what we'll show generally. But if there are  
7 more proceeds to go out to creditors under a Chapter 11  
8 plan, the math could work out such that CEL token could be  
9 worth 30 cents and you still pass best interest because the  
10 margin between the Chapter 11 plan distributions and the  
11 Chapter 7 distributions are so high that that margin  
12 actually -- there's a little bit of margin for error.

13 THE COURT: So I searched the brief and I didn't  
14 see anything in the brief that deals with the issue. I  
15 realize that we're probably dealing with a -- I don't know  
16 how many people we're dealing with who didn't join the  
17 settlement.

18 MR. KOENIG: Right. And we have the burden to  
19 demonstrate at confirmation.

20 THE COURT: Is somebody going to put on something  
21 in the -- so, look, on the issue is it a security, one of  
22 the conclusions, I've read both Ripple and Terraform. You  
23 know, Judge Torres' Decision in Ripple, Judge Rakoff's  
24 decision in Terraform. It seems to me different cases,  
25 different CEL property -- not a capital C-E-L. Crypto.

1 Different crypto. Different conclusions as to what's a  
2 security and what's not.

3 So if based on the evidence presented the Court  
4 concludes that the value of the CEL token is less than 25  
5 cents, I don't think I have to resolve the issue of whether  
6 it's a security or not. The question is do I need to  
7 resolve the issue. I'm not (indiscernible) to decide  
8 issues, but if I decide the issue, it's an appellate issue.  
9 But it seems to me that I don't have -- if the evidence is  
10 such that the Court concludes the value is less than 25  
11 cents, I don't have to resolve the issue of whether it's a  
12 security. Those are my -- I'm ruminating about this. I  
13 haven't resolved how to deal with it, but that's -- I wanted  
14 to get reactions from anybody on Zoom or in the courtroom  
15 today.

16 MR. KOENIG: Right. Thank you, Your Honor. And  
17 we appreciate it. I mean, obviously a trial about whether  
18 or not CEL is a security could be a lengthy trial. And I  
19 know Ms. Scheuer from the SEC is here, and there are a lot  
20 of folks that might be interested in what that decision is.  
21 And we're trying to get out of bankruptcy first and  
22 foremost.

23 THE COURT: I understand.

24 MR. KOENIG: And so if there's a way for us to  
25 resolve the matter in a way that doesn't lead to a

1 contested, expensive, drawn-out appellate process, we would  
2 like to do that. So we appreciate the guidance. We'll  
3 certainly --

4 THE COURT: I'm asking questions. I'm looking --  
5 I didn't see a roadmap presented in what briefs I've looked  
6 at so far.

7 MR. KOENIG: Well, that is helpful feedback for us  
8 to consider in advance of next week, Your Honor.

9 THE COURT: So Mr. Colodny is -- if your witness  
10 testifies and one of the pro se creditors or a represented  
11 creditor or the court asks the question do you have an  
12 opinion what the value of the CEL token was at the petition  
13 date, is the witness going to answer that?

14 MR. COLODNY: Your Honor, Aaron Colodny from White  
15 & Case on behalf of the Official Committee of Unsecured  
16 Creditors.

17 You are correct, we did not put a value and our  
18 expert did not opine on the value of CEL token. What he  
19 opined on was that the value is less than 81 cents, and much  
20 less than 81 cents. The issue that we have, which I think  
21 is uncontroverted, is that prior to the petition date,  
22 significant manipulation of the CEL token price --

23 THE COURT: Okay. Let's assume I find -- I  
24 understand the arguments about manipulation, indictment of  
25 Mashinsky, the whole -- I think I understand that.

1 MR. COLODNY: Correct.

2 THE COURT: But then the question still may come  
3 down to -- let's assume -- again, assumption, not making any  
4 finding. Let's assume that I find that 81 cents is not the  
5 value of the CEL token, is not satisfactory evidence of the  
6 value of the CEL token at the petition date. Well, what is  
7 it?

8 MR. COLODNY: So I think you can get to your best  
9 interest question and in a number of different ways. I  
10 think Mr. Koenig pointed out one. You can assume that the  
11 price is 81 cents. And if the liquidation value of the  
12 debtors would provide CEL token claims with more value than  
13 if the token was 81 cents, then the best interest test is  
14 satisfied.

15 In addition, if Your Honor found that the value of  
16 the CEL token was less than 25 cents, it would be satisfied  
17 (indiscernible) because you could not give -- we're not  
18 giving a hundred percent back to everybody.

19 THE COURT: I just want to say I didn't -- maybe  
20 because I hadn't thought about it before, I didn't  
21 completely follow how the best interest test is satisfied if  
22 the value was 81 cents at the petition date. I know you  
23 went through it very quickly, and I'm not sure I was  
24 completely tuned into it.

25 MR. COLODNY: So the way that I as thinking about



1 it, Your Honor, is if you assume that the value of the CEL  
2 token is 81 cents and assuming a claim at 81 cents under a  
3 Chapter 7 liquidation, a creditor would get back say five  
4 dollars. But under the 25 cent settlement in our plan, they  
5 would get back seven. Then the best interest plan test  
6 would be satisfied.

7 THE COURT: So if your expert is asked the  
8 question during the confirmation hearing, do you have an  
9 opinion as to the value of the CEL token at the petition  
10 date. Is the Court going to get an answer to that question?

11 MR. COLODNY: In our expert's report, he opines  
12 that the value is less than 81 cents. He does not provide a  
13 specific value to the CEL token.

14 THE COURT: I didn't read every page of it, but I  
15 did look for does he have an opinion as to the value of it.  
16 And the only opinion I saw was it's less than 81 cents.

17 MR. COLODNY: That's correct.

18 THE COURT: But my question to you is if he's  
19 asked on cross-examination do you have an opinion as to the  
20 value of the CEL token on the petition date, is he going to  
21 have an answer?

22 MR. COLODNY: I'm not sure that I should be  
23 testifying for my witness, Your Honor.

24 THE COURT: I'm not -- he's your witness. I just  
25 -- I'm not asking what his opinion is. Is he going to have

1 an opinion as to the value of the CEL token on the petition  
2 date?

3 MR. COLODNY: Right. And the problem I'm having,  
4 Your Honor, is I am not my witness. And so to --

5 THE COURT: Okay. Better find out the answer.

6 MR. COLODNY: I understand, Your Honor. What I'll  
7 say, Your Honor, is in his expert report, he does not opine  
8 as to the value of the CEL token.

9 THE COURT: I know that. That much I got. I  
10 looked carefully. Because I was running through this  
11 analysis in my head where people who didn't join the  
12 settlement aren't bound. The plan treatment is 25 cents.  
13 They are dissenting members of a bunch of different classes.  
14 The best interest test has to be satisfied. And that raised  
15 the question maybe you have multiple loops to get there.  
16 But the question to me naturally followed if they're getting  
17 25 cents, what would they get in a Chapter 7.

18 MR. COLODNY: Understood, Your Honor.

19 THE COURT: That could vary by -- is it a  
20 security? They get zero because it's subordinated. It's  
21 not a security, what do they get.

22 MR. COLODNY: Right, Your Honor. I think that's  
23 one of the points that I wanted to raise today, is how I  
24 view it, there are four different arguments that you could  
25 get to zero. And CEL token holders would have to win all of

1       them to get to something more.

2               First, what is CEL token? Is it a debt  
3       instrument? Is it equity? If it's equity, then the answer  
4       would be zero.

5               Second, if it's a security and subordinated under  
6       510(b), it would also be zero or be subordinated to the  
7       value of unsecured claims --

8               THE COURT: My guess -- and I'm not anxious to  
9       decide whether it's a security or not one way or the other -  
10      -

11              MR. COLODNY: Reading the room, I understand that.

12              THE COURT: -- one way or the other.

13              MR. COLODNY: Correct. Third, does it have any  
14       value since on the petition date Celsius ceased to exist.  
15       And CEL token, when I think about CEL token, there is no  
16       payment obligation. There is no inherent right of anyone  
17       that holds CEL token to any value from Celsius.

18              THE COURT: For native tokens of an insolvent --  
19       whatever, exchange, lending platform, whatever -- but for a  
20       native token with company that's not going to have ongoing  
21       business, one could say it can't have any value.

22              MR. COLODNY: Correct. Because --

23              THE COURT: Whether it's a security or a  
24       commodity, it's an it. But if Celsius' business doesn't  
25       exist anymore, how can it have any value other than people

1 who want to manipulate the price.

2 MR. COLODNY: Correct. And then the third is the  
3 market price -- or the fourth, excuse me, is the market  
4 price, Your Honor. And whether that market price was an  
5 accurate indication of that.

6 THE COURT: Let's assume I find it's not an  
7 accurate -- what is it -- is it 80 cents instead of 81? Is  
8 it 75? Let's take it all the way down.

9 MR. COLODNY: Right. And I think --

10 THE COURT: Am I going to hear evidence about  
11 that?

12 MR. COLODNY: Your Honor hit the nail on the head  
13 where you said if it's less than 25, then there's no issue.  
14 And here, one of the things that we have is we have an  
15 overwhelming amount of affected parties on both sides saying  
16 we accept 25. We have 96 percent --

17 THE COURT: They do. But people who didn't join  
18 the settlement don't.

19 MR. COLODNY: Correct. But if I were to ask the  
20 market is 25 cents a correct price, you now have 98 percent  
21 of CEL token holder saying --

22 THE COURT: No, you have 98 percent saying enough  
23 is enough and we'll take the 25 cents.

24 MR. COLODNY: You have 98 percent voting in favor  
25 of a plan that treats CEL token as 25 cents.

1 THE COURT: Okay. But the 98 percent can't bind  
2 objectors -- you know, dissenting members of a class.

3 MR. COLODNY: Understood, Your Honor. You also  
4 have 96 percent of all other creditors who are diluted by  
5 that saying we accept this as well --

6 THE COURT: And they still can't find -- you still  
7 -- if I'm wrong, tell me. Because none of the -- I haven't  
8 seen any briefs that raise this issue. But in my mind, it  
9 then became an issue of dissenting creditors have to receive  
10 at least as much as they would in a Chapter 7 liquidation,  
11 the best interest test. Okay. So -- and if -- I take it  
12 you're acknowledging that it's the Debtor's burden, the  
13 committee pushing this burden to establish that the best  
14 interest test is satisfied.

15 MR. COLODNY: Correct.

16 THE COURT: Okay. Are you going to tell me how  
17 you're going to do that?

18 MR. COLODNY: Your Honor --

19 THE COURT: Between now and Monday?

20 MR. COLODNY: I guess my point, Your Honor --

21 THE COURT: Just that I entered an order this  
22 morning. We're starting the evidence on Tuesday morning.  
23 We're going to deal with -- we'll deal with opening  
24 statements and I want to raise another issue that I want  
25 addressed that I alluded to in the order that was entered a

1 little while ago.

2 MR. COLODNY: I guess my point, Your Honor, is  
3 that the value of CEL, it's not as if this is a manipulation  
4 case where we can look back and say a month ago, two months  
5 ago there was no manipulation and we're going to look at  
6 that price. We've got a token that was heavily manipulated  
7 throughout its history. And that started at the very  
8 beginning.

9 THE COURT: At the (indiscernible) it was, what,  
10 20 cents?

11 MR. COLODNY: (indiscernible) it was 28 cents I  
12 believe under Mr. (indiscernible) calculation.

13 THE COURT: Okay. I don't (indiscernible).

14 MR. COLODNY: But even then, Your Honor --

15 THE COURT: But I want to make sure that you  
16 understood that the -- I'm not sure -- I'll listen to  
17 anybody who wants to talk during the hearing about, well,  
18 don't approve the settlement, Judge. But let's assume I  
19 approve the settlement. What amount, how am I going to deal  
20 with the dissenting members of -- and I appreciate the fact  
21 that you -- while there was no separate class, you did --  
22 the voting results do break out, look at the CEL  
23 (indiscernible) overwhelmingly, but not a hundred percent.

24 MR. COLODNY: That's right, Your Honor.

25 THE COURT: You know, I mean, I could certainly

1 envision a witness, expect witness testifying assuming I've  
2 been asked to assume that it's a security and I've been  
3 advised about 510(a), assuming those issues, the value is  
4 zero. Okay. I've been asked to assume that it's not a  
5 security. And in that scenario -- if one of the other  
6 creditors hasn't asked about it, I'm going to ask about it.  
7 Do you have an opinion as to the value -- assuming it wasn't  
8 the security, do you have an opinion as to the value -- I  
9 guess it wouldn't really matter if it was a security or not  
10 -- do you have an opinion as to the value of the CEL token  
11 on the petition date? You know, whatever the value is. If  
12 it was a security, the law arguably demands a different  
13 result.

14 Let me stop there. I wanted to make sure I got  
15 out -- and look, if you all disagree with this sort of  
16 mental gymnastics I've been going through trying to figure  
17 out how am I supposed to deal with dissenting members of the  
18 class. And I do -- and look, and it may be that somebody is  
19 going to try and persuade me this is not an issue of the  
20 best interest test, this is an issue of the claims allowance  
21 process. It struck me not if the plan proposes the  
22 following treatment and the plan is adopted, that pushes you  
23 back to the best interest test. I don't know the difference  
24 -- okay. Anything else you want to say?

25 MR. COLODNY: No, Your Honor.

1 THE COURT: Okay. Does anybody else want to be  
2 heard?

3 UNIDENTIFIED SPEAKER: (indiscernible).

4 THE COURT: Hold on. We have somebody else in the  
5 courtroom. And then I will hear anybody on Zoom. But let  
6 me finish with the people in the courtroom. Okay? Go  
7 ahead.

8 MS. SCHEUER: Thank you, Your Honor. Good  
9 morning. For the record, Therese Scheuer for the U.S.  
10 Securities and Exchange Commission. With me on the line  
11 through Zoom is my colleague, Matthew Uptegrove, also from  
12 the U.S. Securities and Exchange Commission.

13 As Your Honor may know, the SEC filed an action in  
14 the U.S. District Court for the Southern District of New  
15 York against both Celsius and Mr. Mashinsky alleging, among  
16 other things, that the CEL token was offered and sold as a  
17 security. Celsius has consented to a final judgment against  
18 it in the district court, but that action has been stayed  
19 pending the outcome of a criminal case against Mr.  
20 Mashinsky.

21 Given what's been discussed today, I'm not sure  
22 that the Court needs to rule on whether CEL is or is not a  
23 security. But to the extent that Your Honor is inclined to  
24 do so --

25 THE COURT: I'm not inclined to do so. Unless I



1 have to.

2 MS. SCHEUER: -- the SEC would request that such a  
3 ruling be limited to the facts before the Court.

4 THE COURT: It would be.

5 MS. SCHEUER: Thank you. And not without  
6 preclusive effect outside these cases.

7 THE COURT: I've already said I'm not -- as I've  
8 gone through these mental gymnastics, it seemed to me I  
9 didn't have to reach a result -- under some scenarios, I  
10 don't have to reach a result of deciding whether it is or is  
11 not a security. Okay. And at least my reading of Judge  
12 Rakoff's decision and Judge Torres' decision, they differ.  
13 Not that either one is necessarily the absolute answer as  
14 applied to the CEL token, but nevertheless. I have great  
15 respect for both Judge Rakoff and Judge Torres.

16 Let me ask you. My understanding -- and may be  
17 wrong, correct me -- is that the Celsius, its agreement with  
18 the SEC -- and this is one of the things I focused on -- and  
19 you can tell me if I'm wrong -- Celsius did not agree as  
20 part of its settlement with the SEC that the CEL token was a  
21 security. Am I right or wrong about that?

22 MS. SCHEUER: Well, Your Honor, the consent is on  
23 a no-deny basis. I think that the Debtors have given their  
24 view of what the language in that consent means. At this  
25 time, not taking a position on whether that is...

1 THE COURT: Thank you. Anything else you want to  
2 say?

3 MS. SCHEUER: No thank you, Your Honor.

4 THE COURT: Thank you very much. Anybody else in  
5 the courtroom want to be heard?

6 All right. I'll listen to anybody who wants to be  
7 heard on Zoom.

8 MR. DAVIS: Can I go first, Your Honor? This is  
9 Otis Davis.

10 THE COURT: (indiscernible), Mr. Davis.

11 MR. DAVIS: Yes. Sorry about my appearance  
12 earlier. I did try to login, but I got kicked off. But for  
13 the record, this is Otis Davis.

14 THE COURT: Yes.

15 MR. DAVIS: Your Honor, the burden of proof is on  
16 the debtors to show that CEL token is below 81 cents after  
17 the petition date. Aaron Colodny cannot answer the question  
18 of what the CEL token price is on the petition date because  
19 his expert (indiscernible) doesn't know the answer. The  
20 answer is 81 cents --

21 THE COURT: No, it --

22 MR. DAVIS: I am sure Aaron Colodny --

23 THE COURT: Mr. Davis, the expert report hasn't  
24 been admitted in evidence yet, and he's not testified. But  
25 my reading of the report is that the value of the CEL token

1 on the petition date is less than 81 cents. He didn't say  
2 what it was, he just said it was less than 81 cents.

3 MR. DAVIS: It's interesting that he didn't say  
4 what it was. He cannot say what it was because he doesn't  
5 have any evidence to prove what it was.

6 Anyway, Judge, I did file a motion at Docket  
7 Number 3532. And in that motion, you will see the evidence  
8 that I provided that shows why the CEL token should be at 81  
9 cents. Specifically 15 million shorts being closed that  
10 pushed the price back up to neutral. All the evidence --

11 THE COURT: Mr. Davis, Mr. Davis, I don't consider  
12 the activity of shorts as establishing what the price for  
13 bankruptcy purposes of the CEL token was on the petition  
14 date. So if that's the evidence you're relying on, good  
15 luck. Okay. You'll be free to cross-examine any witnesses  
16 who testify about the value of the CEL token, and I ought to  
17 hear evidence I suppose about the activity relating to the  
18 short. But don't expect that the Court is going to rule  
19 based on the short activity that the value was 81 cents.  
20 The price on the petition date, if it was manipulated, does  
21 not reflect the value of the CEL token on the petition date.

22 If you have a witness who is going to testify to  
23 give an opinion on value, I'll certify listen to that. It  
24 will be subject to any objections or anything. But if you  
25 have a witness, I gave a deadline for anyone objecting to

1 confirmation to submit written testimony supporting that  
2 position. And the reason I staggered whether -- you know,  
3 all of the objections are important. There are fewer  
4 objections than I thought we would find ourselves in this  
5 position now. I thought it was important for all of those  
6 who are objecting to be able to see the written direct  
7 testimony of anyone testifying in support of confirmation.  
8 And of course we'll have a chance during the cross-  
9 examination to participate in the cross-examination of them.  
10 And I staggered it so that you wouldn't actually have to  
11 submit the written testimony in support until you knew what  
12 it is that you were responding to. Okay. That's why the  
13 separate dates for submitting evidence in support of,  
14 evidence in opposition.

15 But if you have a witness who is going to testify  
16 that the value of the CEL token based on the big short  
17 reflects its actual value, you could put on that evidence.  
18 I'll listen to it and I'll keep an open mind about it.

19 Anything else you want to add at this point? So  
20 the issue is not --

21 MR. DAVIS: No, that's it.

22 THE COURT: -- getting decided today, Mr. Davis.

23 MR. DAVIS: Correct, Your Honor. It's not getting  
24 decided today.

25 THE COURT: Okay. Anything else you want to add?

1 I'm happy to hear you.

2 MR. DAVIS: I think I'm done.

3 THE COURT: Okay. Does anybody else on Zoom wish  
4 to be heard today?

5 MR. ABREU: Judge, Your Honor? Artur Abreu.

6 THE COURT: Yes, go ahead. Just identify yourself  
7 again.

8 MR. ABREU: Yes. Pro se creditor, Artur Abreu.

9 You can call me Arthur. I just want to...

10 THE COURT: Go ahead.

11 MR. ABREU: I just want to add some points that  
12 the Judge brought.

13 So I purchased CEL from (indiscernible) at five  
14 dollars. You are referring to the value (indiscernible) if  
15 CEL is given to those people that had CEL, they can at least  
16 start (indiscernible) at their point in time, which will be  
17 I suppose much more beneficial than just getting I think 17  
18 cents with the recovery. The other point that you mentioned  
19 is that anyone that had no voice in arguing against this  
20 plan and why Celsius did business is that it was -- it makes  
21 sense to have a small percentage in CEL of their holdings,  
22 but never a full position. So everyone is forced to vote  
23 for the plan because in most cases, their holdings on other  
24 creditors are superior to the total value of CEL. So the  
25 plan puts us against the world and effectually in my view

1 not equitable because some people did not have CEL, others  
2 had. But all the proceedings of CEL was used in a matter  
3 that had no determination or no separation of investments  
4 and earnings. And you could say that some of the  
5 proceedings that Celsius received from the value of CEL went  
6 to pay -- so you are creating an issue that is not equitable  
7 and that should be seen as well.

8 The other matter that you refer -- that there is  
9 no value in CEL without Celsius. It's not entirely true  
10 because the ledger itself, the coins are just a database  
11 value. And you could use the total value to create another  
12 project. For example, all the current CEL holders. So in  
13 many crypto projects you have tokens that are equal to CEL.  
14 Sometimes even the company or the initial promoter or  
15 creator of this coin went to other things and part of the  
16 community uses the digital, decentralized entry to then  
17 distribute maybe another token at no cost for the user but  
18 tries to add some value. So this is just to highlight that  
19 it's not entirely true. There is no value without Celsius.  
20 Celsius actually after the filing disappears. So I could  
21 argue that for me, CEL currently -- if Celsius just  
22 (indiscernible) the entire supply does not pass any sort of  
23 security concerns.

24 My issue here is not really the price. Okay? The  
25 issue is that Celsius (indiscernible) blocked the

1 withdrawals of CEL at the filing. So you could not  
2 liquidate. And what was perceived by creditors varies  
3 greatly in time.

4 So first, people believed that some of the  
5 statements of the liquidity were correct. And I had some  
6 creditors approach me telling that they were still buying  
7 CEL due to the misrepresentations of the company.  
8 (indiscernible). So people were actually still believing it  
9 was (indiscernible) and they bought more CEL. And now they  
10 are -- they bought more CEL in the app so they are now stuck  
11 with an investment being made on false pretexts.

12 You also have -- the UCC I think (indiscernible)  
13 at some point say highlight that Celsius still had value I  
14 think around September or November, the CEL token. That all  
15 I think had impact on how creditors could (indiscernible)  
16 because they think, oh, they are trying to make a plan that  
17 could have some value to CEL. So all of those things affect  
18 this.

19 But I think it would have been simple just to know  
20 how much Celsius earned from selling CEL. So how much did  
21 actually creditors spend buying CEL at inflated prices.  
22 Because I should (indiscernible) the 81 cents. Okay? It's  
23 (indiscernible) the long and the short side of different  
24 points in time. So I think it would have been simple just  
25 to (indiscernible) how much CEL -- Celsius received from the

1 proceedings of selling CEL. See that value, what is the  
2 average cost. And if not given a recovery, (indiscernible)  
3 at least have a discrimination of the claims. Because most  
4 of the claims that (indiscernible) are following seems to  
5 portray to CEL itself. Yet they are giving a very well  
6 recovery and are not being specific on, okay, so we are  
7 going to receive a (indiscernible) for following the CEL  
8 market manipulation from insiders and company itself, but we  
9 are not giving that recovery to the people that got affected  
10 the most by buying inflated prices of CEL from the company.  
11 That's my point. If anyone wants to argue something -- I  
12 read the (indiscernible) filing. It's -- there is a lot of  
13 information that is taken out of context that I would like  
14 to at least (indiscernible). But that's my other point.

15 Go ahead, Judge. Sorry for the delay.

16 THE COURT: All right. Thank you very much. Mr.  
17 Mendelson?

18 MR. MENDELSON: Thank you, Judge. Good to see you  
19 again. Erik Mendelson, pro se creditor.

20 The foundation, the building blocks as to why we  
21 are in this mess is because of the CEL token. I'm a little  
22 bit concerned why we've been talking so much about price for  
23 the last 41 minutes and not talking about why CEL is a  
24 security. So I'll give my opinion.

25 The SEC determines a security based on the Howey



1 Test, which qualifies an investment contract subjecting asset  
2 as under the securities law. When investment contracts  
3 exist, there is investment money in a common enterprise with  
4 a reasonable expectation of profits. The four elements of  
5 the Howey Test -- and I know I'm probably talking to an echo  
6 chamber because all of you understand this -- is, A, an  
7 investment of money. Clearly, every person that bought CEL  
8 token invested their money. I don't think that can be  
9 disputed.

10 Two, in a common enterprise, that common  
11 enterprise is the CEL token, AKA Celsius Network.

12 Three, there was an expectation of profit. There  
13 is not one person that bought CEL token with the expectation  
14 of a donation or with the expectation of losing money.

15 And four, (indiscernible) the efforts of others  
16 clearly as the Elementus opinion stated, Alex Mashinsky and  
17 other members of Celsius executive team manipulated the  
18 price of CEL token even before the sales squeeze.

19 All four elements of the Howey Test are met with  
20 the CEL token. And I therefore respectfully request that  
21 you rule the CEL token as a security. And I hope that your  
22 ruling of CEL as a security does not affect the other  
23 creditors that have already opted into the plan. That's the  
24 only reason why I have been going on record about this. I  
25 don't want other class members that have accepted the plan

1 to be affected by it. Unfortunately, if your ruling does  
2 affect them, then so be it. But I hope that your ruling of  
3 CEL as a security affects those members that feel like CEL  
4 is worth more than 25 cents. And I thank you for your  
5 (indiscernible).

6 THE COURT: Thank you, Mr. Mendelson.

7 Mr. Abreu?

8 MR. KOENIG: He was the gentleman that just spoke,  
9 Your Honor, right before Mr. Mendelson. That was Mr. Abreu.

10 THE COURT: Oh, okay. All right. Thank you. All  
11 right. Anybody else who hasn't spoken yet wish to be heard?

12 MR. IOVINE: Hi, Your Honor. This is Jason  
13 Iovine, pro se creditor.

14 THE COURT: Yes, Mr. Iovine.

15 MR. IOVINE: One of the issues that I had, one is  
16 that I believe CEL token should have been a separate  
17 question on the ballots. It would have had I believe a  
18 different outcome. We are tired and we did want to just get  
19 over this. But a lot of us do believe that it is being  
20 undervalued. And I would point out that there would have  
21 been a big difference in the vote if it was just CEL token  
22 being questioned.

23 And the other thing is with -- I don't know if  
24 this is the right hearing or not, but within the plan, there  
25 is no recovery in the litigation for CEL token holders.

1 They were removed from that. And this is with  
2 (indiscernible) pleading guilty to manipulation. And we're  
3 going to be left out of a possible fraud recovery when we  
4 were hurt twice now with Celsius and CEL token. I don't  
5 think that's right. And I hope Your Honor sees that and  
6 changes that or instructs them to look into it. Thank you.

7 THE COURT: Thank you, Mr. Iovine. Anybody else  
8 wish to be heard?

9 MR. KIRSANOV: Your Honor, Dmitry Kirsanov, pro  
10 se creditor.

11 MR. KIRSANOV: I have a comment about residents of  
12 Hawaii where (indiscernible) CEL token holders cannot  
13 receive their CEL or any cryptocurrency token in kind  
14 according to the plan and thus are entitled to cash. I have  
15 attempted to reach out to Kirkland and the UCC regarding  
16 this matter, but I have yet to receive a response.

17 My question is what valuation would they be  
18 provided in the first 90 days of distribution. This is not  
19 explained in the plan. I understand that after the 90 days,  
20 it utilizes the deactivation date value. In the custody  
21 settlement, there is some language that indicates the Debtor  
22 is not able to satisfy in-kind, they utilize the petition  
23 date values. So I'm wondering what Hawaii residents  
24 actually receive. Thank you.

25 THE COURT: Thank you. That's really not relevant

1 to the issue today. But, Mr. Koenig, are you able to  
2 respond at all?

3 MR. KOENIG: Good morning again. Chris Koenig.

4 Mr. Kirsanov, so what Mr. Kirsanov is referring to  
5 is that in certain jurisdictions, we can't make crypto  
6 distributions under securities laws. And we're obviously  
7 not going to violate securities laws.

8 He has an interesting point that I frankly had not  
9 considered. And I apologize if we haven't connected. If  
10 you want to email me, my email is in the signature block for  
11 all of the Celsius filings. It's Chris.Koenig@kirkland.com.  
12 And I'm happy to speak after this.

13 His point is that the plan provides that custody  
14 distributions would be made for 90 days. And then after the  
15 90 days, there is a conversion table that will convert  
16 crypto into fiat. I think his question is what happens in  
17 the first 90 days before that conversion table is set.

18 I want to think about it more, but we should -- we  
19 can certainly discuss after the hearing. It's a fair point.

20 THE COURT: You ought to try and discuss and see  
21 whether there's a way of...

22 MR. KOENIG: I think there's a pretty simple  
23 solution, Your Honor.

24 MR. KIRSANOV: Thank you. I appreciate it.

25 MR. KOENIG: Thank you.

1 THE COURT: Does anybody else wish to be heard.

2 MR. AMERSON: Yes, Judge. This is Jason Amerson,  
3 pro se creditor.

4 THE COURT: Yes. Go ahead.

5 MR. AMERSON: So a couple quick comments if you  
6 will indulge, comments and observations on just long and  
7 shorting in general. I would like to point out that buying  
8 and selling activity is not the only determination that  
9 should be considered, Your Honor. I mean, it  
10 (indiscernible) White & Case is putting on that only the  
11 longing or the buying activity should be considered  
12 manipulation. But price activity is a two-way street and it  
13 always is. So the notion that shorting activity shouldn't  
14 be considered -- should not be considered as price  
15 manipulation seems to be very complex. And I would like to  
16 point out that even today there is -- just this last week  
17 there was a Barons article published that Tesla tops the  
18 list for one of the most manipulated insurance stocks on the  
19 market. Now, I know we're talking about a security and not  
20 a crypto. But the same rules apply. Every price of every  
21 stock in crypto is determined (indiscernible). You cannot  
22 dismiss the shorting activity and only consider the longing  
23 activity. And besides, not -- in and of itself, there's  
24 nothing wrong with that. There's nothing illegal. There's  
25 nothing amoral. It's simply people choosing to buy a

1 security or a crypto for whatever reason, which is their  
2 right.

3 THE COURT: Mr. Amerson, the issue potentially for  
4 the Court to have to resolve is what was the value of the  
5 CEL token on the petition date. Let's say that it has to be  
6 whatever the value was with all shorting activity at that  
7 time, which is something I don't fully grasp. I'll listen  
8 to the testimony when it comes in. So we're not going to  
9 resolve that today.

10 MR. AMERSON: I understand that. I understand  
11 that. But all I'm trying to say is that --

12 THE COURT: Thank you, Mr. Amerson.

13 MR. AMERSON: -- the manipulation goes on with  
14 every stock in every cryptocurrency, every single day.

15 THE COURT: Okay. Does anybody else wish to be  
16 heard who has not been heard already? All right. The Court  
17 has another hearing in 11 minutes. So we'll adjourn this.

18 Deanna, are we using the same Zoom connection for  
19 the others?

20 CLERK: It's not hybrid, so it's going to be a  
21 separate login.

22 THE COURT: Fine. Okay.

23 MR. KOENIG: Your Honor, just very briefly. You  
24 mentioned you want to say something about -- you mentioned  
25 your order for next week and there was something you wanted

1 to say about it.

2 THE COURT: Yes, I did. Thank you. And it's one  
3 of the reasons I added to the order that got entered. And I  
4 inadvertently left out the U.S. Trustee who had requested an  
5 opening statement. So a corrective order has been filed.

6 MR. KOENIG: Yes.

7 THE COURT: But the end of the order -- this is  
8 something I wanted to talk about, how to deal with exhibits.  
9 Something was brought to my attention yesterday that  
10 Kirkland was, because of the volume, was putting F...

11 MR. KOENIG: FTP.

12 THE COURT: FTP address, but was requiring that  
13 only people who had filed a proof of claim could get access  
14 to it. Where do you get that from?

15 MR. KOENIG: We understand the point, Your Honor.

16 THE COURT: Let me make crystal clear, I don't  
17 know how this is going to shake out with all the exhibits.  
18 I do public trials. If there's anything that somebody  
19 wishes to seal or redact, they have to make a motion. Okay.  
20 I understand with a lot of exhibits, that can get  
21 complicated. I, as I think you know from the beginning of  
22 this case when I refused to redact a lot of information, I  
23 am pretty much a stickler for public trials, public filings.  
24 Everybody has access to it. So what I would ask you to do,  
25 talk with Mr. Colodny and your colleagues. Come up with

1 another plan. We're not going to have a system where only  
2 creditors who signed a non-disclosure agreement and who have  
3 had a proof of claim are going to get access to exhibits.  
4 This is a public trial.

5 MR. KOENIG: Understood.

6 THE COURT: That's what I wanted to talk about.

7 MR. KOENIG: Understood. I have two very narrow  
8 points there. One is a number of our exhibits include  
9 personally identifiable information that has been sealed.  
10 We can redact those.

11 THE COURT: Okay. Redact.

12 MR. KOENIG: And we have a very narrow -- we will  
13 file a sealing motion of -- we have -- as part of the trial  
14 -- I'm sorry.

15 THE COURT: Personally identifiable information is  
16 frankly a no-brainer as far as I am concerned.

17 MR. KOENIG: Right.

18 THE COURT: But redaction is the answer.

19 MR. KOENIG: Right. We will do that. And the  
20 other item is as part of our case-in-chief, we value the  
21 illiquid assets. The illiquid assets include litigations  
22 against counterparties. If the counterparty were to see  
23 where we marked that litigation, that could harm the company  
24 competitively. So we will file a sealing motion for it  
25 after --



1 THE COURT: You have to file a sealing motion.

2 MR. KOENIG: We will of course -- I just wanted to  
3 bring it to your attention.

4 THE COURT: That was what -- I reacted when -- one  
5 of my law clerks brought it to my attention that you had  
6 filed something or put something that people had to -- only  
7 people with proofs of claim, and they have to agree to a  
8 non-disclosure agreement. That's not how we conduct trials.

9 MR. KOENIG: Understand. We will redact  
10 personally-identifiable information. We will redact,  
11 consistent with the sealing motion that we will file.  
12 Because I just don't want the counterparty to see what we  
13 marked the litigation at, which we will explain in the  
14 sealing motion, Your Honor.

15 THE COURT: That's fine. I think...

16 MR. KOENIG: Okay. So we understand Monday will  
17 be opening statements.

18 THE COURT: Yes.

19 MR. KOENIG: Tuesday we'll start the evidence.

20 THE COURT: Yes. Tuesday. And also -- the only  
21 reason I did that is I think we'll comfortably get the  
22 opening statements done on Monday. Because of the judicial  
23 conference policy on access to court hearings, remote access  
24 to court hearings once the evidence starts, the public and  
25 the press can only be in the courthouse to hear it. I don't

1 know how many are going to show up. We'll have overflow  
2 available to the extent we need it. There is video into the  
3 overflow rooms. So that was one of the reasons I separated  
4 out the evidence from opening statements.

5 Let me think. I don't think there's anything else  
6 that I want to raise specifically about the trial.

7 Just I will alert you all I should be back here by  
8 -- I teach Monday morning and then I have another  
9 commitment. I should be back by exactly two or a few  
10 minutes late. We'll comfortably get everything done that is  
11 going to get done on Monday.

12 MR. KOENIG: Okay. The only other question I had,  
13 Your Honor, is if there is a government shutdown, I see that  
14 that does not affect anything. But I had to ask the  
15 question.

16 THE COURT: The court remains open. We're  
17 committed going -- look, the problem is not for this trial.  
18 I have other things. I can't -- you know, there's a lot of  
19 days set aside for this. I don't know whether we need all  
20 of them. We'll see. November, I've got a 20-day trial.  
21 I'm scheduling other matters for 5:00 in the afternoon  
22 because I've got to keep up with a calendar. That means  
23 overtime for staff.

24 The federal courts have from filing fees money  
25 available to keep us going for some time, whether judges and

1 clerks and everybody gets paid or not, we'll keep going. So  
2 yes, we're going forward.

3 MR. KOENIG: Okay. That's what I thought. I just  
4 wanted to hear it from you. Okay. We will see you next  
5 week.

6 THE COURT: We'll see you next week.

7 MR. KOENIG: Thank you, Your Honor.

8 THE COURT: Okay.

9 (Whereupon these proceedings were concluded at  
10 10:55 AM)

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing  
transcript is a true and accurate record of the proceedings.

A handwritten signature in cursive script that reads "Sonya M. Ledanski Hyde". The signature is written in dark ink and is positioned above the printed name.

Sonya Ledanski Hyde

Veritext Legal Solutions

330 Old Country Road

Suite 300

Mineola, NY 11501

Date: September 29, 2023

[& - affected]

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**Exhibit B**

**October 2, 2023 Transcript (Opening Arguments)**

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 22-10964-mg

4 - - - - - x

5 In the Matter of:

6

7 CELSIUS NETWORK LLC,

8

9 Debtor.

10 - - - - - x

11

12 United States Bankruptcy Court

13 One Bowling Green

14 New York, NY 10004

15

16 October 2, 2023

17 2:13 PM

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20

21 B E F O R E :

22 HON MARTIN GLENN

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: JONATHAN

1 HEARING re HYBRID CONFIRMATION HEARING.

2

3 HEARING re Hybrid Hearing RE: CEL token Settlement under  
4 Bankruptcy Rule 9019, if applicable.

5

6 HEARING re Hybrid Hearing RE: Debtor's Amended Motion for  
7 Entry of an Order Authorizing the Debtors to Redact and File  
8 Under Seal Certain Confidential Information (Doc## 3644,  
9 3635)

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25 Transcribed by: Sonya Ledanski Hyde



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1 P R O C E E D I N G S

2 THE COURT: All right, please be seated. Good  
3 afternoon, everyone. Mr. Koenig.

4 MR. KOENIG: Good afternoon, Your Honor. Deanna,  
5 could you please make my colleague Jeremy Young a cohost for  
6 sharing privileges?

7 CLERK: All right, Mr. Young is a cohost.

8 MR. KOENIG: Thank you so much. For the record,  
9 Chris Koenig, Kirkland & Ellis, for Celsius. Your Honor, it  
10 is such a pleasure to be here at the commencement of the  
11 confirmation hearing. We're here seeking confirmation of  
12 our modified Chapter 11 plan that's been overwhelmingly  
13 accepted by our accountholders.

14 This plan is the culmination of over a year of  
15 working collaboratively with all of our stakeholders from  
16 the Committee, formal ad hoc groups, regulators, and other  
17 governmental parties, as well as individual accountholders.  
18 Simply put, it's time to confirm the plan so that we can get  
19 out of bankruptcy and promptly make distributions to our  
20 accountholders and other creditors.

21 Before getting into what's next, I want to take a  
22 minute to walk through how we got here because context is so  
23 important. We filed a presentation at Docket No. 3630.  
24 Your Honor, do you have a copy of that presentation?

25 THE COURT: It's up on the screen.

1 MR. KOENIG: Okay. Wonderful. I'm going to start  
2 on Slide 4. So these cases were filed in July of 2022.  
3 Today, on the eve of confirmation that has such overwhelming  
4 support, it's easy to forget just how challenging the early  
5 stages of the case was. We filed for Chapter 11 in the  
6 midst of an industry-wide crypto winter that depressed  
7 prices across the board. The pause had happened just a  
8 month prior to filing.

9 State and federal regulators and other  
10 governmental agencies were actively investigating Celsius'  
11 prepetition business model for, among other things, alleged  
12 unregistered offerings of securities, money transmitter  
13 license issues, and securities fraud. That's not the way  
14 that anybody draws up the playbook for a Chapter 11 case.

15 So the early days of these cases continued to be  
16 difficult and uncertain. U.S. Trustee filed a motion to  
17 appoint an examiner. Regulators routinely appeared at  
18 hearings and told Your Honor about their concerns with our  
19 business model. Accountholders filed motions trying to  
20 regain access to the cryptocurrency that they deposited on  
21 Celsius platform. So what did Celsius do in light of all of  
22 these challenges?

23 At the direction of our independent and newly  
24 appointed special committee of the board of directors, we  
25 decided that the only path forward was full engagement and

1 full transparency. We did not object to the appointment of  
2 the examiner. Rather, we consented to her appointment and  
3 we fully cooperated with her investigation. We provided  
4 over 230,000 documents and she conducted 34 total interviews  
5 with 26 current or former employees.

6 Around the same time, the special committee told  
7 Mr. Mashinsky that he could either resign or be fired and he  
8 resigned. We engaged with regulators and other governmental  
9 agencies about their concerns regarding our business model.  
10 We reached historic, consensual resolutions with each of  
11 those regulators. None of the regulators are objecting to  
12 the plan today, and that's because of those agreements.

13 I think that's truly remarkable, given where these  
14 cases started. It seemed in the early hearings of the case,  
15 there was a revolving door of regulators who wanted to make  
16 sure Your Honor understood their frustrations about our lack  
17 of engagement. We fixed that. We were so pleased to be  
18 able to work with them to be able to fully resolve their  
19 issues on the plan.

20 At Your Honor's suggestion early in the case, we  
21 established email and phone lines where Celsius creditors  
22 can easily write in and ask questions. We responded to well  
23 over 1,000 emails to creditors during these cases. At some  
24 point, we just stopped counting. Perhaps most importantly,  
25 we decided to fully engage with the Committee, individual



1 creditors, and groups of creditors, to find consensus  
2 wherever possible, even if it meant making very large  
3 concessions in order to reach an agreement and drive the  
4 cases forward.

5 The Committee is the natural statutory portal to  
6 the Debtors. Their goal is to be a fiduciary for unsecured  
7 creditors and to provide a check on the Debtor in  
8 Possession. In most cases, the Committee is the Debtor's  
9 principal adversary. At the beginning of these cases, it  
10 certainly went that way. The Committee objected to many of  
11 our initial motions, insisted on wide-ranging consent  
12 rights, and the Committee also objected to our first  
13 exclusivity motion.

14 What the early days of the case taught us was that  
15 the only way to get out of bankruptcy was by truly building  
16 consensus and working with all stakeholders and not fighting  
17 over every last little thing. These cases are very  
18 expensive and we certainly could have fought over every last  
19 little thing and asked Your Honor to make rulings on every  
20 legal issue, but that would've been costly, would've led to  
21 delay, and also uncertainty in developing our transaction.

22 So building consensus meant that the Debtors had  
23 to really embrace the Committee and the accountholders that  
24 they represent and work together, and that meant making  
25 significant concessions to the Committee. We agreed to a

1 very short first extension of exclusivity with the  
2 Committee, even though we thought that the facts and  
3 circumstances of these cases certainly warranted a much  
4 longer one.

5 We agreed to wide-ranging consent rights for the  
6 Committee on cash management, security stipulation, bidding  
7 procedures, and other key orders. We truly invited the  
8 Committee in and gave them co-equal consent rights over key  
9 decisions in the case, from the decision to announce a  
10 stalking horse to picking a winner of the auction and giving  
11 them broad consent rights over all of the documents  
12 underlying the plan.

13 Perhaps most importantly, we agreed to turn over  
14 claims and causes of action to a litigation administrator  
15 that would pursue that litigation post-emergence on behalf  
16 of creditors. In many Chapter 11 cases, the Debtor and the  
17 Committee fight over exactly that issue, who is going to  
18 bring claims and causes of action of the estate, and Your  
19 Honor may have -- you know, in other cases, may have had to  
20 rule on the STN standard and whether it was the Debtors or  
21 the Committee that would bring those cases.

22 That did not happen here. Earlier this year, we  
23 entered into a stipulation with the Committee to put those  
24 claims against former insiders aside and allow the  
25 Committee's designee, a litigation administrator, to pursue

1 those claims for the benefit of accountholders. Simply put,  
2 we could have fought about everything and instead, we made  
3 the intentional and conscious decision to truly work with  
4 the Committee and try to get out of bankruptcy.

5 These Committee members in particular have  
6 dedicated an inordinate amount of their own personal time  
7 and efforts to this case to try to get the best effort --  
8 the best outcome for creditors. I know that there are folks  
9 on social media who think it's very easy to second guess the  
10 Committee members, but their dedication of their own time,  
11 all of which is totally unpaid, and their fervent and honest  
12 desire to get to the right answer for accountholders is  
13 without question.

14 So I want to thank Mr. Colodny. I want to thank  
15 his clients for being able to work so constructively with us  
16 to get to this point. We simply wouldn't be here without  
17 them and without being able to work so constructively with  
18 them. Even though we often disagreed on key issues, we were  
19 able to work together to get to resolutions that allowed us  
20 to move these cases forward.

21 So, getting back to the timeline on the slide. So  
22 the way that I think about these cases is really in two  
23 stages. In the first stage, we needed to get the business  
24 operating safely in bankruptcy, start cooperating with all  
25 the different investigations, and get our new management

1 team in place with Mr. Ferraro as our new interim CEO. And  
2 we had some key legal issues that we had to resolve before  
3 we could work towards actually developing a transaction to  
4 get out of bankruptcy.

5 We had to have the Earn trial in trial in December  
6 to resolve the dispute over who owned the cryptocurrency in  
7 the Earn accounts, the Debtors or the accountholders. Given  
8 how many active pro se accountholders were arguing that the  
9 crypto belonged to them, there was no alternative. We had  
10 to have a judicial resolution. We could not have done it  
11 consensually. And we litigated with Custody and Withhold  
12 about their ownership rights as well.

13 Flipping to the next slide on the developments in  
14 this calendar year, January and December were probably the  
15 key turning point in the cases. We litigated Earn, Custody,  
16 and Withhold. We obtained the Court's ruling on the Earn  
17 dispute and we got the final examiner's report. All of  
18 these items shed light on key issues and frankly set the  
19 framework for the rest of the cases.

20 So that moved the cases into phase two and allowed  
21 us to move forward and focus on developing a transaction  
22 that would maximize the value of Celsius' business so that  
23 we can get out of bankruptcy. And during stage two, we kept  
24 resolving issues and building consensus wherever possible.

25 In the early portion of 2023 we reached

1 settlements with both the Custody and Withhold ad hoc groups  
2 to resolve key questions about the applicability of  
3 preferences and defenses for those accountholders. The  
4 preference portion of that Custody and Withhold trial would  
5 have been very interesting academically, but it would have  
6 been expensive, risky, and would have delayed the  
7 development of any transaction.

8 And so we've worked to pay out cryptocurrency to  
9 those accountholders that participated in the settlements.  
10 As Mr. Ferraro has regularly reported in his updates to the  
11 Court, we've now distributed almost \$80 million in crypto to  
12 folks that have participated in those settlements.  
13 Critically, we reached a deal with Series B investors. This  
14 was perhaps the most complex and challenging dispute of the  
15 case.

16 Series B were seeking priority over all  
17 accountholders. They said that they had the right to the  
18 value of CNL and subsidiaries including mining and GK8.  
19 After the Court ruled that the customers did not have  
20 contractual claims against every legal entity, the Debtors  
21 and the Committee advanced numerous alternative theories  
22 from constructive fraudulent transfer to intercompany  
23 claims, substantive consolidation, and even a class claim on  
24 behalf of all accountholders.

25 Simply put, these cases would not -- we would not

1 we standing here today if we not -- had resolved that  
2 litigation. We would still be fighting with the Series B  
3 holders. Because of that settlement, we're able to take the  
4 value of GK8 mining and CNL, and in our view, rightly  
5 distribute the value of those legal entities to  
6 accountholders and other creditors under the plan instead of  
7 the Series B. Can we turn to Slide 11.

8 So these settlements cleared the way for us to  
9 develop and pursue a value maximizing transaction. The  
10 sales and marketing process was long and involved, but it  
11 was wildly successful. We started in March and we named  
12 NovaWulf as a stalking horse bidder. That transaction  
13 wasn't perfect, but it was a good starting point and it  
14 generated real competitive tension among other bidders.

15 We got numerous additional bids. We named two  
16 additional qualified bidders and we had a month long  
17 auction. The auction lasted longer than any of us would  
18 have liked, but it was wildly successful, as I said. We  
19 generated hundreds of millions of dollars of additional  
20 value for the transaction through the competitive tension of  
21 the auction process and through lower fees and extra  
22 contributions by Fahrenheit to the transaction.

23 And the particularly unique part of Celsius'  
24 business is that we have not only liquid cryptocurrency but  
25 real illiquid assets, too, most notably the mining business.

1 Celsius' mining business is already one of the largest in  
2 the country and we also have other illiquid assets too. We  
3 have causes of action relating to historic relationships and  
4 investments in a variety of other cryptocurrency businesses.

5 So maximizing value means not only distributing  
6 the liquid cryptocurrency that we have, but ensuring that  
7 accountholders can realize the full value of the illiquid  
8 assets as well, the mining business in particular. Selling  
9 the mining grades for the scrap that they are outside of the  
10 mining company would be particularly value destructive.

11 So what we were focused on in phase two and stage  
12 two of the cases was we wanted to find an excellent partner  
13 with a proven track record in crypto and finance generally.  
14 We found that partner in Fahrenheit who has demonstrated  
15 experience in key areas of managing cryptocurrency, Bitcoin  
16 mining, staking, and risk management generally. More  
17 specifically U.S. Bitcoin is already one of the largest and  
18 most successful Bitcoin mining operators in the country.  
19 They will run Newco's mining operations.

20 Proof Group will lead Newco's staking efforts and  
21 contribute intellectual property with respect to staking and  
22 assist Newco in developing its own staking business. And  
23 Fahrenheit is going to work to list the equity of Newco on  
24 NASDAQ to provide creditors with the maximum liquidity  
25 possible for the stock.

1           So we're very excited about Fahrenheit and what  
2           they have to offer. We believe that they will maximize the  
3           value of Newco for the benefit of the accountholders. And  
4           Fahrenheit believes in the business. They have agreed to  
5           invest up to \$50 million of their own money in the business,  
6           right alongside accountholders. They are putting their  
7           money where their mouth is.

8           So after we announced the Fahrenheit transaction  
9           in late May, we worked to build additional consensus. In  
10          mid-July, we met with the Earn and Borrow ad hoc groups for  
11          three days in mediation before Judge Wiles. We reached an  
12          agreement on the terms of amendments to the plan that would  
13          gain the approval of those ad hoc groups and resolve the  
14          intercreditor disputes between Earn and Borrow.

15          Once that was completed, that meant that we had  
16          agreements with each ad hoc group for each of the Debtors'  
17          programs: Earn, Custody, Borrow, and Withhold. And before  
18          turning to the objections, I just really briefly want to  
19          talk about the orderly winddown. Experience in these cases,  
20          has taught us that it's important to have a backup plan. We  
21          believe that the Newco plan is executable and we maximize  
22          value, but we don't know exactly what the future holds.

23          We hope to be able to get out of bankruptcy by the  
24          end of this year, but we thought it prudent to set up a  
25          backup plan so that if we have to pivot for any reason, we



1 are ready to do so.

2 So, with that very long winded opening, that  
3 brings us to today. I'm not going to go through all of  
4 these slides. I don't want to go through all these slides,  
5 but can we do Slide 15?

6 So these are folks that filed formal and informal  
7 objections. Looked at the list of the parties that are  
8 going to speak this afternoon and what's notable is how many  
9 are speaking in support of the plan, and in looking at some  
10 of the names, a couple of months ago, you might have thought  
11 that they would have been on the other side of the ledger.

12 So we're pleased to have driven so much consensus.  
13 But turning to the objectors, as we set forth in our brief,  
14 we think we've resolved nearly all of the objections that  
15 have been filed. We made adjustments and clarifications to  
16 the release and exculpation provisions to incorporate all  
17 the comments that we received from the U.S. Trustee.

18 We are now resolved with the SEC and the state  
19 regulators and we also resolved many of the reservations of  
20 rights and other limited objections that were filed through  
21 agreed language in the modified plan or in the confirmation  
22 order. So only a few objections remain. This is just an  
23 opening, but I'll just briefly walk through a couple of the  
24 key ones now.

25 First, there were a number of borrowers that filed

1 letters -- retail borrowers who objected to the plan on the  
2 basis that they believe their plan treatment is  
3 inappropriate. They are arguing that they own the  
4 cryptocurrency that was deposited to support their loan.  
5 But the Borrow terms of use are very clear on this issue,  
6 just as the Earn terms of use were. Celsius holds legal  
7 title to those cryptocurrency assets and we can use,  
8 dispose, or hypothecate those assets as Celsius sees fit.  
9 The borrowers don't own the collateral, we do.

10 They are unsecured creditors. What the borrowers  
11 do have is a right of setoff because they have claims  
12 against Celsius for the return of the cryptocurrency they  
13 deposited and Celsius has a claim against them for the  
14 repayment of the loan principal. And that's exactly how the  
15 Chapter 11 plan is structured. Borrowers have a right of  
16 setoff.

17 And notably, this treatment was accepted by  
18 borrowers in over 96 percent in dollar amount and 98 percent  
19 in number. And they also have some additional rights that  
20 they achieve through the mediated settlement that we reached  
21 with the Borrower Ad Hoc Group. Most importantly, they have  
22 the option to repay the principal balance of their loan.  
23 They will receive a like amount of cryptocurrency back in  
24 the amount of the principal balance.

25 Now, why that's important, Your Honor, is tax

1 reasons, frankly. If they have a low basis in the  
2 cryptocurrency they deposited, receiving a like amount back  
3 is a much better tax outcome for them than if they were to  
4 have those claims set off. It might be otherwise  
5 economically the same, but obviously, if we can structure a  
6 transaction to save taxes for our accountholders, we're  
7 happy to do so.

8 We also agreed to work constructively with  
9 borrowers who want to take advantage of this option but  
10 might need financing. So to the extent they identify a  
11 third party lender who would come in and give them financing  
12 to make this principal repayment, we will cooperate to the  
13 extent we can and with the lender to make sure that this  
14 transaction can go through.

15 So this is all consistent with the borrower's  
16 legal rights under the borrower terms of use, which means  
17 that the best interest test is satisfied with respect to  
18 them. For that reason, these objections by these retail  
19 borrowers should be overruled.

20 Pharos objected on two discrete issues, the  
21 absolute priority rule and the best interest test. On the  
22 absolute priority rule, they complained the Series B holders  
23 who are equity holders are receiving a distribution under  
24 the plan when creditors are not being paid in full. To be  
25 clear, the Series B holders -- this is only those that did

1 not affirmatively participate in settlement that Your Honor  
2 ordered earlier this year. This is just for them to receive  
3 their pro rata share of the million dollars that you  
4 approved.

5 Pharos says that this violates absolute priority,  
6 but this Court approved settlement resolved an issue of  
7 priority, too. The Series B holders argued that they were  
8 ahead of creditors and the whole reason we entered into the  
9 settlement was to resolve this very important issue.

10 And notably, I think Your Honor has dealt with  
11 this issue at least adjacently in the Dewey and LeBoeuf  
12 case. In that case, there was a settlement that was entered  
13 into among the partners and some objecting party said that  
14 it was a sub rosa plan and it violated absolute priority.

15 And there, you found that you can -- that a  
16 absolute priority can be diverged from if there is a good  
17 reason to do so. And here we think that there's a very good  
18 reason to do so. It resolved another priority dispute. And  
19 had we not done so, the Series B may have been entitled to  
20 up to \$600 million of assets.

21 Second, they raised the best interest test. They  
22 argue that the liquidation analysis to be presented doesn't  
23 demonstrate that holders of general unsecured claims like  
24 them are receiving under the plan as much as they would in a  
25 Chapter 7 liquidation. But as part of making an argument,

1 they argue that Newco is actually completely valueless, even  
2 though it's being seeded with \$450 million of liquid  
3 currency, Newco will run and operate a mining business where  
4 the Debtors submitted a valuation that has a midpoint value  
5 of \$565 million and other liquid assets that a separate  
6 valuation report valued in the hundreds of millions of  
7 dollars.

8 Their objection says that we've submitted no  
9 evidence, but actually, there's over \$1.2 billion of assets  
10 that Newco is going to be seeded with and we've submitted  
11 two separate expert reports to prove that point and we will  
12 certainly submit them for cross examination this week to  
13 prove the point in Court.

14 Moving on to the next point. A few individuals  
15 objected to the emergence incentive plan that is embedded in  
16 our chapter 11 plan. I want to acknowledge, I know that  
17 executive compensation is understandably a hot button issue  
18 for accountholders who were defrauded. They just want to  
19 get out of bankruptcy. We do, too. But this management  
20 team was not the ones that defrauded the accountholders.  
21 That management team is gone. Those former insiders are  
22 gone.

23 We're under new management who has been working  
24 around the clock to make sure that our systems are ready to  
25 make distributions of over \$2 billion of cryptocurrency

1 that's required negotiating agreements with Coinbase and  
2 PayPal, coordinating with them to make sure that all the  
3 distributions can go off without a hitch and preparing for  
4 Celsius' own distributions of custody under the plan.  
5 Celsius and the distribution agents need to make over  
6 400,000 distributions of liquid cryptocurrency on the  
7 effective date.

8           Accountholders will want that to be done in a very  
9 short period of time, and it's only thanks to the continued  
10 efforts of the company's management team that this will even  
11 be possible. So as an initial matter, the plan included  
12 this incentive plan as part of its terms. The plan was  
13 voted on. The classes of accountholders who objected to  
14 this term voted to accept the plan. It is binding on the  
15 rest of the class so long as it meets best interests, which  
16 it does.

17           This is a payment of up to \$2.6 million. The  
18 difference between a Chapter 7 liquidation and the plan is  
19 well over 100 times that amount and the payment isn't going  
20 to be made by the Debtors, either. It's going to be made by  
21 the post effective date Debtors and only after the plan  
22 administrator verifies that the metrics have been met. That  
23 was a change that we made at the suggestion of the U.S.  
24 Trustee to help resolve their issues with the emergence  
25 incentive plan.

1           So we think the requirements of the Bankruptcy  
2       Code for payment of executive bonuses don't even apply for  
3       these reasons. But even if they apply, the evidence will  
4       demonstrate that EIP easily meets those requirements. The  
5       evidence will show the management team is paid well under  
6       market and in fact will continue to be paid under market  
7       even after the EIP is paid.

8           And the management team's contributions are far in  
9       excess of their typical job duties. Frankly, we could not  
10      be here without the efforts of these executives and we need  
11      to make sure that we properly incentivize them so we can  
12      maximize value and promptly return cryptocurrency to  
13      creditors.

14          The only other significant objections on this list  
15      are largely on CEL token. I believe that Mr. Colodny will  
16      be covering that. It's the Committee's expert on the  
17      valuation of CEL token that is really at the heart of this  
18      issue. There are a few other objections that were covered  
19      in the Committee's brief but not the Debtors' brief so I'll  
20      defer to Mr. Colodny there as well. This is just an opening  
21      statement. We filed a 150-page brief which not sure if Your  
22      Honor has fully read yet.

23           THE COURT: I have now.

24           MR. KOENIG: So --

25           THE COURT: We had a hearing last week. I hadn't

1 been all the way through it, but I have now.

2 MR. KOENIG: So the brief walkthrough is required  
3 in some more detail. I'm not going to belabor the point. I  
4 know we have a lot of folks to speak. So unless Your Honor  
5 has any questions for me, I'll conclude my remarks by saying  
6 we're excited to present our case to confirm the plan.  
7 We're going to work to get out of bankruptcy and make  
8 distributions to our accountholders. I'll cede the lectern  
9 to my colleague, Elizabeth Jones, who's going to be  
10 presenting on the voting results and going to be outlining  
11 the witnesses that you're going to hear from this week.

12 THE COURT: Thank you.

13 MR. KOENIG: Thank you.

14 THE COURT: Ms. Jones?

15 MS. JONES: Good afternoon, Your Honor. Elizabeth  
16 Jones of Kirkland & Ellis on behalf of the Debtors. If we  
17 could start now on Slide 26, which walks through the voting  
18 results. The next two slides, Your Honor, demonstrate the  
19 voting results that we filed in Mr. Brian Karpuk's  
20 declaration at Docket No. 3560 then was subsequently amended  
21 at Docket No. 3574.

22 Your Honor, as demonstrated in the voting results,  
23 the plan has been overwhelmingly accepted by accountholders  
24 in both number and amount. Classes 2, 4, 5, 6A, 7, 10, and  
25 14 out of our 17 classes voted to accept and while Classes 8



1 and 9 may have voted to reject the plan and we have a few  
2 other deemed to reject, as my colleague, Mr. Koenig noted,  
3 we can and do think that the plan should be confirmed as we  
4 set forth in our papers.

5 Your Honor, if I may --

6 THE COURT: There's no one junior to those  
7 rejecting classes that are receiving anything under the  
8 plan?

9 MS. JONES: Not on behalf of their status as an  
10 interest holder, but on behalf of the settlement in Series  
11 B.

12 Your Honor, if I may also provide just a few other  
13 statistics to demonstrate how successful this solicitation  
14 process was. The Debtors distributed approximately 380,000  
15 ballots and received approximately 80,000 in return, giving  
16 us a little bit more than a 20 percent return rate. In  
17 comparison to two of the recently filed crypto cases, in  
18 Voyager, they had about a 5 to 6 percent return rate and in  
19 BlockFi, they had approximately a 10 percent return rate.  
20 Both of those had ballots returned anywhere between 35 and  
21 65 thousand ballots.

22 Your Honor, what's even more impressive here is  
23 that out of those 80,000 ballots that were returned, we had  
24 \$3 billion worth of those claims out of approximately \$5  
25 billion in claims; \$2.55 billion of that came from holders

1 in our Earn class.

2 So Your Honor, what that demonstrates here is that  
3 there has been a lot of participation. We know the ballot  
4 was complicated. It was not an easy check box and yet we  
5 were very, very fortunate that we had 80,000 individuals  
6 willing to walk through that and demonstrate their support  
7 for the plan.

8 In addition, Your Honor, and a few other important  
9 statistics, we had roughly only 515 parties opt out of the  
10 third-party releases and we have only a little bit over  
11 1,700 individuals opt out of the class claim settlement. We  
12 had 30,000 proofs of claim filed, so to have only 1,700 of  
13 them opt out and elect to continue pursuing that is a huge  
14 success from our view.

15 So Your Honor, we would just like to conclude our  
16 opening by introducing the witnesses that we will hear from  
17 over the next few days in addition to Mr. Karpuk from  
18 Stretto. So Your Honor, we have also filed declarations on  
19 behalf of six other witnesses.

20 First, we'll have Mr. Christopher Ferraro, whose  
21 declaration was filed at Docket No. 3581. He is the  
22 Debtors' interim chief executive officer, the Debtors' chief  
23 financial officer, and the Debtors' chief restructuring  
24 officer. He will be providing evidence in support of  
25 certain of the 1129 factors as well as a number of other

1 items that we address through our brief.

2 Your Honor, we will also hear from Mr. Robert  
3 Compagna, who is a managing director at Alvarez & Marsal.  
4 His declaration was filed today -- or was filed last week at  
5 Docket No. 3582 and a supplemental declaration was filed  
6 shortly before this hearing at Docket No. 3653. He will  
7 also provide evidence in support of certain of the 1129  
8 factors as well as the best interest test.

9 Next, Your Honor, we have Mr. Ryan Kielty, who's a  
10 partner of Centerview Partners LLC. His declaration was  
11 filed at Docket No. 3592. He will provide evidence in  
12 support of the mining valuation. You could turn to slide --  
13 perfect, than, you, 29.

14 Next, Your Honor, we have Mr. Steven Kokinos,  
15 whose declaration was filed at Docket No. 3591. He is the  
16 proposed chief executive officer of Newco and a member of  
17 the Fahrenheit Group who was our plan -- and is our plan  
18 sponsor. He will provide evidence in support of the  
19 proposed Fahrenheit go forward business plan.

20 Next, Your Honor, we have Ms. Allison Hoeinghaus  
21 who has filed a declaration at Docket No. 3586. She is also  
22 a managing director at Alvarez & Marsal and she will provide  
23 evidence in support of the Debtors' emerge incentive plan.

24 Finally, Your Honor, we have Mr. Joel Cohen who  
25 filed a declaration at Docket No. 3588. He is a managing

1 director at Stout Risius Ross LLC and he will provide  
2 evidence in support of the Debtors' valuation of certain  
3 liquid and illiquid assets.

4 So Your Honor, as my colleague, Mr. Koenig noted,  
5 we filed a large brief in support of our argument and we  
6 will hear from the witnesses in the next few days on the  
7 factual basis as to why we think the plan can and should be  
8 confirmed.

9 We're here today as a result of a lot of hard work  
10 and consensus building in the last 14, 15 months and we  
11 stand here ready today both to prove our case in chief,  
12 confirm the Chapter 11 plan, and hopefully conclude these  
13 chapter 11 cases.

14 THE COURT: Thank you very much. Mr. Colodny.

15 MR. COLODNY: Good afternoon, Your Honor. Aaron  
16 Colodny from White & Case on behalf of the Official  
17 Committee of Unsecured Creditors. Could my colleague Mr.  
18 Dowdy be made a cohost to share our presentation?

19 CLERK: Yes, just give me one moment, please.

20 MR. COLODNY: Thank you. While you're doing that,  
21 Your Honor, I know I always am batting second to Mr. Koenig  
22 here. We come at this from a slightly different  
23 perspective, and so while I may repeat some of the things he  
24 said, I made an effort to keep my opening remarks shorter  
25 for Your Honor.

1 THE COURT: They didn't use their full allotted  
2 time.

3 MR. COLODNY: To ensure I don't go over, I think  
4 I'll start while they do that.

5 THE COURT: That's fine, go ahead.

6 CLERK: It's -- he's a cohost. He's been a cohost  
7 for a little bit.

8 MR. COLODNY: Yeah, I see it. It's just I think  
9 he's working on trying to get it to a presentation slide  
10 instead of the PowerPoint people.

11 THE COURT: No problem.

12 MR. COLODNY: I'll go a cappella, I guess.

13 THE COURT: Give it another minute. I think if  
14 you click from the beginning in the upper ribbon, you'll get  
15 there. Go ahead.

16 MR. COLODNY: All right. On June 12th, 2022,  
17 Celsius paused withdrawals to stop a run on the bank.  
18 Before the pause, as will be shown in the next slide,  
19 Celsius and executives repeatedly assured accountholders and  
20 the public that everything was fine and all their funds were  
21 safe. On the date of the pause, everyone knew that they  
22 were not. For a month, Celsius was silent and rumors  
23 flowed. Then on July 13th, 2022, we filed Chapter 11 cases  
24 before this Court with no plan for how these cases would  
25 proceed.

1           The first day declaration painted a picture of a  
2           company that was crippled by the crypto winter and had  
3           invested with the wrong people. At that time, Mr. Mashinsky  
4           testified that the company had a \$1.2 billion deficit. The  
5           Committee was appointed on July 27th and was tasked with  
6           representing the interests of the Debtors' largest  
7           constituency, the company's unsecured creditors including  
8           nearly 600,000 retail holders who held the majority of the  
9           claims against the Debtors.

10           Those accountholders were dispersed all over the  
11           world and were without access to their funds. Shortly  
12           thereafter, it became clear that what was testified to in  
13           the first day declaration was not the entire story.

14           Rather, information published by the Debtors and  
15           investigations conducted by the Committee and independent  
16           examiner uncovered a company rife with issues including a  
17           hole in the balance sheet that began in March '21, the  
18           company's repeated misrepresentations of business practices,  
19           an orchestrated corporate cover up of those  
20           misrepresentations, and the company's manipulation of the  
21           CEL token.

22           And while Mr. Mashinsky and Mr. Leon were telling  
23           accountholders that all funds are safe and damn the  
24           torpedoes, full speed ahead, they were secretly withdrawing  
25           tens of millions of dollars from the platform. That is

1 where we started, with a heavy cloud over these estates,  
2 accountholders who had been deceived into entrusting their  
3 hard earned assets with Celsius and a platform that was shut  
4 down so that the few who were quick to withdraw would not  
5 further dissipate the remaining assets to the detriment of  
6 those who did not ask.

7           Upon learning all of that information, we acted  
8 quickly and firmly to ensure that the bad actors were  
9 removed from positions of power that they occupied with  
10 control over accountholder assets. Today, we are before  
11 Your Honor with a plan that if confirmed and consummated  
12 will distribute nearly \$2 billion of Bitcoin and Ethereum  
13 and stock in a new company to the Debtors' creditors.

14           The new equity will maximize the value of the  
15 Debtors' other assets and provide creditors with the ability  
16 to monetize those assets when they would like. Importantly,  
17 the plan also preserves claims against Mr. Mashinsky, Mr.  
18 Leon, and others related to that wrongdoing to be prosecuted  
19 after the bankruptcy case is concluded.

20           The plan includes explicit carveouts to the  
21 typical Chapter 11 releases or excluded parties which  
22 include all former employees, equity holders, contract  
23 counter parties, promoters, advertisers of Celsius that are  
24 not specifically identified as released parties.

25           Now to touch on the plan process a bit and move to

1 where we're going with this trial. Since the beginning of  
2 these cases, our Committee has had one goal, to return as  
3 much value to creditors as soon as we could responsibly do  
4 so. The process has taken longer than we would like, but we  
5 stand on the precipice of confirming the first  
6 reorganization of a major cryptocurrency company.

7 And as Mr. Koenig explained, the path to get here  
8 was not easy or rarely a straight line. There were  
9 significant and novel legal issues that needed to be  
10 resolved to fairly distribute the Debtors' assets. We  
11 methodically navigated those issues before this Court, each  
12 time putting accountholders as a whole first, building  
13 consensus, and creating a foundation for the plan that's  
14 before Your Honor today.

15 We methodically navigated -- while those issues  
16 were being determined, the Committee did not stand in place.  
17 Rather, we pushed the Debtors and worked cooperatively with  
18 them to reorganize and rehabilitate their mining business.  
19 That was not an easy task. The mining business was in  
20 disarray upon the filing and after the filing suffered  
21 significant setbacks due to the financial issues of many of  
22 its major counterparts.

23 As you will hear from Mr. Kielty of Centerview  
24 Partners, the Debtors and the Committee ran a competitive  
25 sales and auction process that took advantage of a rebound



1 in the crypto market and renewed interest in sponsoring the  
2 plan of reorganization for the Debtors. Through the  
3 auction, we were able to leverage that competitive tension  
4 to bring multiple bidders to the table and drive the best  
5 deal possible for creditors including the distribution of a  
6 significant amount more liquid cryptocurrency than was in  
7 the stocking horse bid.

8 The Debtors for their part understood that  
9 creditors would own substantially all of any reorganized  
10 business. And as a part of that auction process, they  
11 worked cooperatively with our clients to identify the  
12 highest and best -- highest bid and best management team to  
13 run the new company. Given the history of Celsius, it was  
14 of paramount importance to our clients that Newco be placed  
15 in trusted hands and our clients spent many days with each  
16 bidder to make the right choice for who would sponsor that  
17 plan.

18 At the end of the auction, the Committee members,  
19 as they've done throughout this case, acted unanimously to  
20 select the Fahrenheit Group as the winning bidder.

21 Fahrenheit is a group of seasoned professionals with  
22 experience in the cryptocurrency industry. They also have  
23 experience building technology companies and managing risk  
24 at large financial institutions. And as you will hear from  
25 Mr. Kokinos, the proposed CEO of Newco, each of the members

1 of Fahrenheit will be making a significant financial  
2 investment in a new company which has yet to be named.

3 Fahrenheit will stand alongside accountholders  
4 with aligned incentives to increase the equity value of  
5 Newco for the benefit of everyone. Now, this new company  
6 will be a first of its kind business. It will have  
7 significant operations concerning two major  
8 cryptocurrencies, a Bitcoin mining company, and it will also  
9 stake the company's own ethereum. I want to touch on three  
10 points that guided the Committee's approach to constructing  
11 this new company. First, compliance with applicable  
12 regulations.

13 We worked to color inside the lines and consult  
14 with the regulators to create a compliant entity out of the  
15 gates. We were presented with many unique ideas for how to  
16 reorganize and restructure the claims against the Debtors.  
17 In many instances, we opted to take the conservative  
18 approach to ensure that we could exit bankruptcy. That was  
19 of paramount importance to my clients.

20 Bankruptcy provides the Debtors with a fresh start  
21 upon emergence. And here, that fresh start is a competitive  
22 advantage for the new company that we were unwilling to  
23 compromise. We also understood that to emerge on our  
24 timeline, we had to work with regulators to ensure that they  
25 were comfortable that accountholders were protected on the

1 other side of these Chapter 11 cases. As Mr. Koenig  
2 mentioned, we've been in constructive dialogue with the  
3 regulators which were led by the Debtors throughout this  
4 process and the lack of any objection from regulators is a  
5 reflection and validation of that approach. It's also  
6 something that differentiates these cases from any other  
7 Chapter 11 case concerning a cryptocurrency company.

8 Second, we wanted to provide creditors with  
9 liquidity. We understand that creditors did not sign up to  
10 own equity and many creditors need access to their  
11 investments. However, many of the investments that Celsius'  
12 prepetition management made are illiquid and selling them  
13 now would have resulted in a steep discount. Putting those  
14 assets in a liquidating trust would also not maximize their  
15 value, as those instruments typically trade for pennies on  
16 the dollar.

17 The plan currently contemplates that those  
18 illiquid assets will be transferred to Newco whose equity is  
19 anticipated to be listed on NASDAQ. That unique opportunity  
20 is only presented through Section 1145 exemption under the  
21 Bankruptcy Code. And as we flagged in our brief, there are  
22 still regulatory approvals that need to be received for that  
23 equity to be listed; however, those regulatory approvals  
24 will not hold up confirmation.

25 THE COURT: Is there an estimate of the timeline

1 to get the securities registered?

2 MR. COLODNY: My understanding, Your Honor, is we  
3 are waiting on the SEC audit function to approve a  
4 preclearance letter. Once that preclearance letter is  
5 approved, we'll then submit the Form 10 and there's a 60 day  
6 waiting period, then, while the SEC reviews that Form 10.  
7 But I want to flag, Your Honor, that it is customary for  
8 confirmation orders to be entered with a condition precedent  
9 to the plan being the receipt of regulatory approvals.

10 And if those necessary regulatory approvals are  
11 not obtained, the plan provides for the mechanism to toggle  
12 to the plan B. We believe the plan B will result in lower  
13 recoveries, but it will allow the Debtors to proceed with  
14 distributing assets to creditors, which is --

15 THE COURT: Is there an estimate on the time for  
16 regulatory approval?

17 MR. COLODNY: Of the --

18 THE COURT: When?

19 MR. COLODNY: I think we're confident it will  
20 occur by the end of the year, but I don't know that we've  
21 received a set estimate from the SEC at this time.

22 THE COURT: Okay.

23 MR. COLODNY: Third, we want to ensure that Newco  
24 will be transparent and overseen by a competent and  
25 accountable board of directors. Before I proceed, Your

1 Honor, I don't want to make any promises that we are going  
2 to receive regulatory approval or emerge by the end of the  
3 year. I think the answer, to be candid, it's unclear and  
4 it's dependent on whether the SEC will grant our  
5 preclearance letter.

6 THE COURT: I wasn't looking for promises.

7 MR. COLODNY: So our third pillar, when we were  
8 thinking about this new company, is we wanted to ensure that  
9 Newco was transparent and overseen by a competent and  
10 accountable board of directors. Newco will be a public  
11 reporting entity that will file 10Ks, 10Qs, and 8Ks of major  
12 events.

13 It will be overseen by a qualified board of  
14 directors, a majority of which were selected by the  
15 Committee through an intensive interview process and Your  
16 Honor will hear from our committee member, Major Mark  
17 Robinson, regarding the board selection process and why our  
18 clients believe that they have selected the best set of  
19 experienced directors to oversee this new company.

20 We also heard from our constituency who wanted to  
21 ensure that creditors had oversight of that board, and we  
22 worked with the Earn group who identified three significant  
23 prepetition creditors to act as board overseers. Now, five  
24 prepetition creditors with a significant stake in Newco will  
25 have a seat at the table and that board will ensure that

1 Newco is operated for the benefit of its shareholders who  
2 will initially be creditors.

3 There were lots of debates throughout the auction  
4 in these cases about how best to reorganize the Debtors'  
5 assets, how to reorganize a cryptocurrency company is not  
6 something you can look up in a cookbook, and we went through  
7 an intensive process which has been detailed in the record  
8 and will be detailed by Mr. Kielty to select the option that  
9 the Committee believes and the Debtors believe is the best  
10 path forward.

11 We heard loud and clear throughout these cases  
12 that creditors were not interested in receiving fiat  
13 currency through a liquidation under Chapter 7, and as will  
14 be demonstrated by the Debtors' witnesses, the recoveries  
15 provided to creditors through the plan far exceed the  
16 recoveries that would be provided if the Chapter 7 Trustee  
17 was appointed and liquidated the Debtors' cryptocurrency,  
18 mining rigs, and illiquid assets. And quite frankly, it's  
19 not close.

20 The culmination of this entire process is an  
21 overwhelming vote in favor of the plan. With over 87,000  
22 accountholders voting to accept in the amount of \$2.8  
23 billion which far surpasses anyone's wildest expectations,  
24 and given where these cases started and the long strange  
25 trip it's taken to get here, I think we all can say these

1 results are a vindication of all the hard work.

2 Now, Mr. Koenig has addressed many of the  
3 objections and I want to spend the rest of my time speaking  
4 about the proposed treatment of CEL token under the plan.  
5 One of the questions before the Court is, what is the CEL  
6 token. The evidence will show that CEL token is a fungible  
7 digital representation of ownership of a unit that was  
8 issued by the Debtors. Mr. Ferraro will explain how holders  
9 of CEL token could use those tokens to pay the company  
10 interest on retail loans at a discounted rate.

11 Accountholders could elect to earn and sell and  
12 receive a higher rewards rate on their deposits than if they  
13 if they elected to receive in the cryptocurrency the  
14 deposited. And CEL token functioned as a type of airline  
15 loyalty miles, where people that held a certain amount of  
16 CEL token could get access to lower rates or products that  
17 the company was offering.

18 Mr. Ferraro will also testify that after the  
19 pause, none of those uses continued to exist. To be clear,  
20 Celsius has no obligation at any time to redeem CEL tokens  
21 or make any payment of cash on account of CEL token. Its  
22 only obligation is to return the CEL token to accountholders  
23 when requested, if they have accounts in the Earn program.

24 Mr. Ferraro will also testify that Celsius  
25 advertised in investor presentations and directly to the

1 public that the value of the CEL token represented the  
2 success of Celsius. Mr. Mashinsky regularly touted the  
3 value of the CEL token on his public videos and how the  
4 efforts of the Celsius team to grow the business would cause  
5 the CEL token to increase and used the circular flywheel  
6 model to demonstrate this.

7 Put simply, CEL token was an equity or equity-like  
8 security whose value rose and fell based on the efforts of  
9 Celsius and Celsius' ability to go -- continue as a going  
10 concern. Now, what CEL token is, determines how it should  
11 be treated under the Bankruptcy Code. If CEL token is an  
12 equity or equity-like security, it would come after all  
13 unsecured claims. Moreover, if CEL token is determined to  
14 be a security, as we have argued in our pleadings, claims  
15 arising on account of the purchase or sale of the CEL token  
16 would be subordinated and would only recover after all  
17 claims are paid in full.

18 However, because the treatment of digital assets  
19 under the Bankruptcy Code is a new issue, it is the  
20 Committee's position that denying any recovery to CEL token  
21 holders who were lied to the same as all other  
22 accountholders, would be inequitable. I want to pause and  
23 point out that all eligible accountholders could have  
24 elected to earn in CEL token, and those that did so  
25 knowingly took a greater risk tied to the success of Celsius



1 than those who elected to earn in kind in the cryptocurrency  
2 that they transferred to Celsius.

3 For example, those that elected to receive  
4 interest in Bitcoin elected to receive a token that had a  
5 value independent of Celsius. Those that deposited Bitcoin  
6 and elected to receive in CEL, elected for this riskier  
7 option which had the potential for a higher return both in  
8 terms of the growth of the token and the amount that they  
9 received as interest.

10 But Celsius has now failed, and because there are  
11 not enough assets to satisfy all claims, providing value to  
12 one set of creditors decreases the amount recoveries for all  
13 other creditors. The Committee attempted to navigate this  
14 delicate balance by offering a 25 cent settlement as value  
15 of CEL token under the plan. That settlement was proposed  
16 through the plan and after a lot of development, the plan  
17 was clear that a vote to accept the plan was a vote to  
18 accept that settlement and the settlement was accepted by an  
19 overwhelming amount.

20 Those voting results are a testament to the  
21 reasonableness of the settlement. Now at the last hearing,  
22 Your Honor noted that the treatment for dissenting CEL token  
23 holders cannot be imposed on those dissenting creditors  
24 unless the Debtors demonstrate that the treatment meets the  
25 best interests of creditors test.

1 In other words, the Debtors must show by a  
2 preponderance of the evidence that the CEL token holders  
3 receive more under this plan than they would receive in a  
4 Chapter 7 liquidation. Here, that test can mean that in  
5 three ways. As we discussed before, first, the Court could  
6 find that the CEL token was the equivalent of equity or  
7 should be recharacterized as equity.

8 THE COURT: Let me just stop you there for a  
9 minute. In the SEC's complaint against Mashinsky and  
10 Celsius, the complaint takes the position that the Earn  
11 accounts under the Howey Test were securities.

12 MR. COLODNY: Correct.

13 THE COURT: If the Earn accounts were securities  
14 and the CEL token was a security, wouldn't they both be  
15 subordinated and essentially be in the same class for  
16 distribution?

17 MR. COLODNY: I don't agree with that, Your Honor.

18 THE COURT: Okay, tell me why.

19 MR. COLODNY: Because the Earn accounts are the  
20 akin to a debt obligation. Celsius has a payment obligation  
21 under an Earn account to return the assets to  
22 accountholders. In every Chapter 11 case, there are  
23 unsecured notes. Unsecured notes is the first item listed  
24 in the definition of security under the Bankruptcy Code, and  
25 payment obligations on behalf of unsecured notes are never

1       subordinated. Damage claims arising from those unsecured  
2       notes may be, but the payment obligations are not.

3               When I think about the CEL token, it's a security  
4       inside of that security and because it's an equity interest  
5       with no payment obligation on behalf of the Debtors, it  
6       should be treated differently than the Earn accounts. I  
7       know it's a fine distinction, but I think it's one that's  
8       incredibly important and it is one that is -- happens in  
9       bankruptcy cases all the time. I've dealt with bankruptcy  
10      cases with \$2.7 billion worth of payment obligations on  
11      unsecured notes and it's never mentioned that those payment  
12      obligations will be subordinated.

13             So I think where I was when I left off were the  
14      three reasons how it can meet the best interest test. The  
15      first, as I talked about, was if it was recharacterized.  
16      The second is 510(b) as you mentioned. In both cases, the  
17      plan could be confirmed if the Court makes either finding if  
18      it provided no value to CEL token holders. However, Your  
19      Honor doesn't need to reach those points.

20             As Mr. Compagna will testify, you only need to  
21      find by a preponderance of the evidence that the value of  
22      the CEL token on the petition date was less than 34 cents to  
23      determine that the best interest test is met. And here,  
24      that's clearly the case.

25             THE COURT: The 34 cents because of what?

1 MR. COLODNY: Thirty-four cents because if you  
2 look at 34 cents times the 47 percent recovery analysis and  
3 look at the 25 cent proposed recovery times the 65 percent -  
4 - 67 percent reorganization, the 67 percent reorganization  
5 on the 25 cent recovery is greater than 47 on the 34  
6 percent. Sorry.

7 Now, if you consider the CEL token in terms of its  
8 value being tied to Celsius and consider that Celsius by its  
9 own admission was wildly insolvent as of the petition date  
10 and that the Celsius platform was shut down and there was no  
11 longer a use for the CEL token, the value on the CEL token  
12 has to be zero or something close to it. Mr. Galka, our  
13 expert, is going to tell you that determining the specific  
14 value of the CEL token at a point in time is not easy  
15 endeavor for a number of reasons.

16 First, it lacks any underlying cash flows or  
17 financial metrics that would support its value in a manner  
18 that's traditionally applied to valuation. The market price  
19 of CEL token could be an indicator of the value; however, as  
20 the evidence will show the market price, here was never an  
21 accurate indication of its value as it was significantly  
22 affected by Celsius' covert purchases of the token prior to  
23 the petition date.

24 Celsius advertised that it was purchasing the  
25 amount of CEL token it needed to pay customer rewards. That

1 was a business model. It's one of the critical elements of  
2 why CEL token should be a security. The evidence will show  
3 that what Celsius did not tell the public or even many of  
4 its employees was that it was purchasing far more than  
5 required to pay rewards to inflate the price and create the  
6 perception of success for its flailing enterprise.

7 Celsius has admitted that, and I'm quoting from  
8 the statement of facts that Celsius admitted was true as  
9 part of its non-prosecution agreement it entered with the  
10 DOJ. The rise in the value of the CEL token was not the  
11 product of market forces, but was instead attributable to  
12 the fact that Celsius executives including Mashinsky had  
13 orchestrated a scheme to manipulate the CEL token by taking  
14 steps to artificially support the price of CEL.

15 Now, Your Honor will hear testimony from Mr.  
16 Galka, our expert witness and Mr. Galka will corroborate  
17 that admission and he will --

18 THE COURT: Is that admission entitled a  
19 preclusive weight in this trial?

20 MR. COLODNY: I'm not sure, standing here today,  
21 Your Honor. But what Mr. Galka will demonstrate by the  
22 evidence is that applying every assumption Celsius' favor,  
23 it purchased CEL -- it's purchases of CEL token exceeded the  
24 amount of CEL token it paid the customer by over \$100  
25 million. And that fact led him to conclude that Celsius was

1 taking actions to affect the price of the token prepetition.  
2 And the market wasn't only affected by Celsius' purchase of  
3 the token. The market was lied to as Celsius persistently  
4 misrepresented its financial position and covered up those  
5 lies.

6 It was not the case that some people knew and some  
7 people didn't. Some people did. They watched the videos  
8 live and then the clips were deleted. Now, you only have to  
9 look at the first pages of our presentation where Celsius  
10 and executives were telling the market everything was fine,  
11 while under the curtain, they've admitted they were  
12 insolvent by a billion dollars.

13 Now, prior to starting Elementus, Mr. Galka traded  
14 complex derivatives for over nine years. Part of his role  
15 in those positions was to identify dislocated markets or in  
16 other words, markets where for the price of an asset did not  
17 reflect its intrinsic value. And Mr. Galka will testify  
18 that following the date that Celsius paused withdrawals based  
19 on his review of market data and significant experience  
20 trading dislocated markets, it is his opinion that the  
21 market for CEL token was extremely dislocated and  
22 thereafter, the market price was not remotely accurate  
23 indication of its value.

24 Now, at the last hearing, you asked me the very  
25 direct question, what will Mr. Galka say the CEL token is

1     worth on the petition date.

2             THE COURT: Yes, and I gave my permission earlier  
3     today that a supplemental declaration can be -- I don't know  
4     whether the order got entered or not. I was not at the  
5     courthouse this morning, but I was asked that question. I  
6     gather there was a request to be able to file a supplemental  
7     declaration and I approved that.

8             MR. COLODNY: Correct, Your Honor. And the reason  
9     why we want to file that supplemental declaration is we  
10    understood that you want to give everybody the chance to see  
11    the testimony. So we didn't -- even though we didn't want  
12    it to come out on the (indiscernible). We wanted everyone  
13    to have the opportunity. And what Mr. Galka will testify is  
14    that if asked to put a price on the CEL token on petition  
15    date, he would not have quoted a price. I think that's  
16    unremarkable, and it's because he believes that the CEL  
17    token had no value and there were no economics supporting  
18    the value of the token on that petition date that he has  
19    seen.

20            Mr. Ferraro, the CEO of the company, will  
21    similarly testify that he believed the CEL token had little  
22    to no value on the petition date and there is no  
23    economically rational reason for the value to increase  
24    between the pause and the petition date. Now, people have  
25    taken issue with that conclusion, but it should come as no

1 surprise. In fact, well before the pause, Celsius disclosed  
2 that the CEL tokens may become unusable, illiquid, and/or  
3 worthless in the event that the Celsius platform ceases to  
4 operate.

5 Now, that's enclosed in the risk disclosures that  
6 as Your Honor found were accepted by 99 percent of all  
7 accountholders. Put simply, Your Honor, it's unremarkable  
8 that a token based off of the success of a company whose  
9 sole use related to the operation of the platform that  
10 company ran would have no value when that platform  
11 spectacularly failed.

12 In closing, these cases have been a difficult  
13 journey for all accountholders. The plan has been accepted  
14 by an overwhelming amount of those accountholders and as  
15 will be demonstrated throughout this week, it meets all the  
16 requirements for confirmation under the Bankruptcy Code and  
17 should be confirmed.

18 THE COURT: Thank you very much, Mr. Colodny.

19 MR. COLODNY: Thank you.

20 THE COURT: All right. Let me hear from the  
21 United States Trustee next.

22 MS. CORNELL: Good morning, Your Honor.

23 THE COURT: Good afternoon, but very nice to see  
24 you in the courtroom, Ms. Cornell.

25 MS. CORNELL: Shara Cornell for the record, the



1 Office of the United States Trustee. Your Honor, we  
2 appreciate the hard work of all the parties in these cases  
3 and their engagement with our office on various issues. We  
4 have an active creditor body which began on first days,  
5 continued through the 341 meeting with over 1,000 creditors  
6 in attendance, up to and through this confirmation hearing.  
7 But our role did not end at the 341 meeting, as is often the  
8 case. This case required more.

9 We actively managed this case which resulted in  
10 among other things, an examiner, an ombudsman, and several  
11 cost saving measures, and the benefit of the work product of  
12 the examiner has been discussed extensively previously.  
13 Also given that the Debtors' assets are cryptocurrency, cash  
14 management required unique disclosures and protocols to  
15 safeguard these assets which are ultimately to be  
16 distributed to creditors.

17 We worked with the professionals to ensure the  
18 safety of these resources for the Debtors' estate and like  
19 the Debtors and the Committee and many of the professionals  
20 in this case, we have been routinely contacted by creditors.  
21 There was activity by various individuals that resulted in  
22 referrals to certain agencies, matters that we take  
23 seriously as do our sister agencies and departments.

24 Like the Committee and the Debtors and their  
25 professionals, we've also been on the receiving end of toxic

1 language and threats --

2 THE COURT: So has the Court.

3 MS. CORNELL: -- of course -- from creditors and  
4 parties and interest. But through all of this, our goal has  
5 remained steadfast. We moved this case along. We're also  
6 following the letter and the spirit of the law. And we do  
7 stand here today. We're nearing the finish line.

8 With all that said, we have a few objections  
9 pending to confirmation which we were -- which were agreed  
10 at the disclosure statement hearing to be heard today at  
11 confirmation. And during the interim, we've engaged in many  
12 discussions with the various professionals and the UST is  
13 appreciative of those efforts to claw back in some respects,  
14 the exculpation and release provisions. And there really  
15 was a lot of negotiating and in some instances disagreement,  
16 but overall the Debtors and their professionals worked  
17 diligently to include many of our concerns.

18 We still hope that our remaining issues can be  
19 negotiated before the end of this confirmation proceedings.  
20 While these revisions were helpful, like the temporal  
21 limitation, the exculpation provision, both the exculpation  
22 and release provisions are still somewhat overbroad and need  
23 further revisions and clarifications on the record, which we  
24 expect the Debtors to do in the next few days.

25 First, with respect to exculpation, only estate

1 fiduciaries can and should be exculpated by the plan. While  
2 the United States Trustee believes that a proper exculpation  
3 tracks 1125(e) of the code providing for a limitation of  
4 liability in connection with certain good faith solicitation  
5 and plan participation efforts, Courts in this District, as  
6 Your Honor knows, routinely follow a Aegean Marine Petroleum  
7 Network, Inc., 599 B.R. 717. But here, the Debtors seek  
8 exculpation for former and current --

9 THE COURT: I'm not sure I agree with that  
10 statement completely. I think that judges on this Court,  
11 including myself, have granted broader exculpation than that  
12 decision. So there is not uniformity among the judges on  
13 our Court.

14 MS. CORNELL: No, I would not say there's  
15 uniformity, Your Honor. No. But it is often quoted and  
16 used in this context.

17 Transactional parties are also exculpated in this  
18 instance, but they're not limited to the specific  
19 transactions that they took part in. Indeed, the ad hoc  
20 Committees, the BRIC, Fahrenheit, the class claim  
21 representatives, Coinbase, PayPal, all performed specific  
22 and limited acts but are being provided broad protections  
23 for any and all work done in connection with these cases.  
24 The fact that a party is engaged in one action before a  
25 Bankruptcy Court does not entitle that party to have all of

1 its actions within a bankruptcy case protected.

2 For example, exculpation for events, occurrences,  
3 and agreements is vague and not necessarily limited under  
4 Aegean. Furthermore, we believe a temporal scope is  
5 necessary and one has now been added by the Debtors. But  
6 the scope is confusing when read with the other provisions  
7 because the other provisions refer to entities that are not  
8 in existence and could not have performed any of the  
9 appropriately exculpated actions during the identified  
10 scope. Entities that are not in existence or could not p  
11 perform the properly exculpated actions during the temporal  
12 scope should be removed to avoid any confusion.

13 Second, the released parties are still over broad  
14 as well. For example, the plan administrator is a released  
15 party. The Debtors have not yet provided a factual basis or  
16 a legal basis for his inclusion. What consideration the  
17 plan administrator has made to the case must be identified.  
18 Evidence of valuable consideration for each party is  
19 necessary.

20 Also, while the Debtors allege that various  
21 parties played an important role, for example, certain ad  
22 hoc committees, it is unclear as to what valuable  
23 consideration those parties gave yet, and the terms like  
24 other professionals as it relates to released parties is  
25 also somewhat unclear. Any party to be released should be

1 named in the plan and not just referred to, generally  
2 speaking, as other professionals.

3 Moreover, the Debtors are yet to explain how  
4 claimants that have rejected the plan will be bound by these  
5 release provisions. You're not a releasing party if you  
6 have rejected the plan, but you're also a releasing party if  
7 you fail to vote for the plan. This question requires  
8 additional information on the record by the Debtors.

9 Lastly, the confirmation order includes a waiver  
10 of Rule 3020. Congress intended to give parties 14 days for  
11 a reason and there is no basis to waive that in this case.  
12 We do not want to force people or parties into expedited  
13 motion practice, which is a waste of judicial resources and  
14 estate money. The most recent agenda I believe was the 29  
15 responses for confirmation, which is an unusually large  
16 amount of responses, and we do not want to cut off the  
17 rights of these parties.

18 There are a lot of issues and I think 14 days,  
19 which is the rule not the exception, should be applied in  
20 these cases. Also Your Honor, as an update, after the  
21 hearing on Friday regarding the United States Trustee's  
22 concerns about Committee membership, as the docket reflects,  
23 we filed a supplemental notice of appointment at Docket No.  
24 3631.

25 Additionally, Your Honor, United States Trustee

1 and the Committee have been in contact over the weekend and  
2 have reached a resolution in principle regarding certain of  
3 the exculpation language regarding to Mr. Noyes and any  
4 potential actions associated therewith. The language is  
5 currently being finalized and we hope to present that to the  
6 Court later this week via the Debtor.

7 This concludes our opening remarks and we're  
8 available to answer any questions from the Court or  
9 otherwise.

10 THE COURT: Thank you, Mr. Solomon.

11 MS. CORNELL: Thank you.

12 THE COURT: All right. The Ad Hoc Earn Account  
13 Group.

14 MS. KUHNS: Good afternoon, Your Honor. Joyce  
15 Kuhns of Offit Kurman for the Ad Hoc Group of Earn  
16 Accountholders. This has undisputedly been a long and  
17 arduous road for the Earn customers, starting with the pause  
18 and subsequent revelations of a systemic fraud perpetrated  
19 on them, and then navigating the intersection of two  
20 seemingly disconnected worlds, the decentralized world of  
21 cryptocurrency which they were used to, and the centralized  
22 bankruptcy forum which they were not.

23 There were many misunderstandings at that time.  
24 New legal theories had to be tested, starting with who owned  
25 the customer deposited cryptocurrency. It is no surprise

1 that the January 4 decision determining that it was property  
2 of the estate sent shockwaves through the Earn community.  
3 The concept of dollarization was also concerning,  
4 dollarization of crypto claims as of the petition date, and  
5 at a time when Bitcoin, for example, was steadily rising in  
6 value. It led to the inevitable Earn question. Who is  
7 benefiting from the appreciation in the crypto and why isn't  
8 it us?

9           These were among the concerns that led to the  
10 formation of the Ad Hoc Earn Group by significant Earn  
11 claimants who realized the need to come together and speak  
12 with a unified voice to advance their common goals. On  
13 behalf of the Ad Hoc Group, Mr. Nagi and I would like to  
14 publicly thank Brett Perry, Nicholas Farr, and Immanuel  
15 Herrmann, the founders of the Ad Hoc Group and its original  
16 steering committee members of which Mr. Herrmann was chair,  
17 who were dedicated from the onset to two guiding principles,  
18 parity among creditors and consensus building, and never  
19 wavered in serving the larger Earn community even at the  
20 expense of their individual interests.

21           The first test of the ad hoc's cohesiveness came  
22 with a July mediation before Judge Wiles. It also served as  
23 a reality check of what could be accomplished and what could  
24 not under the Bankruptcy code. The group's acceptance of  
25 certain constraints such as dollarization of crypto claims

1 on the petition date led to a successful mediation that set  
2 the treatment of Earn versus Borrower claims, led to the  
3 Borrower settlement, critical milestones on the path to plan  
4 confirmation among other things achieved in the mediation  
5 term sheet.

6 Having had a seat at the table at the mediation,  
7 the Ad Hoc and its larger constituency recognized the  
8 importance of keeping a seat at the table as future  
9 stockholders of Newco. This led to intense series of  
10 negotiations among the primary stakeholders, resulting in  
11 the Newco -- the three Newco board observer seats being  
12 designated by the Ad Hoc Earn Group and Earn designee  
13 appointed to the Litigation Oversight Committee responsible  
14 for prosecuting future litigation to enhance creditor  
15 recoveries, and lastly, to enter into a plan support  
16 agreement among the Debtors, the Committee, the Ad Hoc Earn  
17 Group, certain Earn pro se claimants, the class action  
18 plaintiff Mr. Tuganov, and Simon Dixon.

19 No one got everything they wanted in this case,  
20 but everyone had an opportunity to be heard in this  
21 courtroom and we appreciate that, Your Honor, as well as to  
22 be heard outside the courtroom in an unprecedented mix of  
23 media, mass emails, Twitters, telegram, Twitter spaces, town  
24 halls and YouTube presentations. The active participation  
25 of creditors in this case has set a new bar for creditor



1 engagement, enabling consensus building to occur and  
2 culminating in the astounding result of almost \$2.5 billion  
3 in Earn claims voting to accept a plan in a crypto case.

4 No one did this alone, admittedly, but as a result  
5 of the dedication of many, including the tireless efforts of  
6 the Debtors' new management, the Committee, their respective  
7 counsel, and their professionals, in a very complex case  
8 which as you've heard had many, many active constituents and  
9 novel issues. In the end, the major stakeholders came  
10 together in their commitment to deliver the best outcome  
11 possible to creditors with the quickest exit achievable.

12 Now we are at the final stage. We look forward to  
13 a successful confirmation process and the long awaited start  
14 of distributions, hopefully in 2023, as well as the future  
15 opportunities presented to creditors as shareholders in  
16 Newco. Thank you, Your Honor for the time today on the  
17 agenda.

18 THE COURT: Thank you for your presentation. All  
19 right, counsel for the Ad Hoc Borrowers Group.

20 MR. ADLER: Good afternoon, Your Honor. David  
21 Adler from Carter & English on behalf of the Ad Hoc Group of  
22 Borrowers. First, I want to say it's again pleasure being  
23 back in this courtroom. This is only the second time that  
24 I've been here since COVID started. The first was in June,  
25 maybe July.

1 But I wanted to talk a little bit about the  
2 concerns of the Borrowers, and as Your Honor knows, the  
3 group that I represent are the group of individuals who  
4 transferred their crypto onto the Celsius platform in  
5 exchange for a loan and for which they paid interest. So  
6 they paid interest. They did not take interest out. And  
7 that was primarily a choice that they made because they  
8 wanted to have some liquidity against their crypto, but they  
9 didn't want to run the risk of having a disposition event  
10 because many, many of the borrowers and Celsius have  
11 extremely low basis. And a disposition event would be very,  
12 very bad in this case, especially for some of the higher  
13 borrowers.

14 So, going back in time to March, we were happy  
15 with the NovaWulf transaction because it kept the loan alive  
16 and following the auction, we received thereafter a plan  
17 that, in which the Debtor wanted to exercise its setoff  
18 rights, which would potentially be very, very bad for the  
19 Borrowers in terms of a disposition. And that was sort of  
20 the groundwork where we were when we got to the mediation.

21 So after three intensive days of mediation down  
22 the hall and upstairs, the Borrowers reached -- or the  
23 steering group reached a resolution on the issues in which  
24 the Borrowers would pay back the loans if they could. They  
25 were given the option to do that. As Mr. Koenig said

1 earlier, the Debtors have indicated that they'll cooperate  
2 in terms of finding a new lending source, and we've spent  
3 many, many, many hours since the mediation identifying new  
4 sources who can provide refinancing to the Borrowers. And  
5 in exchange for that, the excess claim is essentially, is  
6 treated as the Earn claim.

7 The Borrowers will get back 100 percent of their  
8 principal amount in crypto if it's Bitcoin and ETH, but not  
9 in the other currencies. So from the Borrowers'  
10 perspective, that was a result that they could live with.  
11 Certainly, the voting reflects that the Borrowers were --  
12 that the plan was acceptable to the Borrowers, and I do want  
13 to say that probably the biggest issue in the mediation was  
14 over the liquid crypto weighted distribution because for the  
15 Borrowers that need to refinance, they need to get as much  
16 crypto as possible in order that their LTVs are in the range  
17 that traditional crypto lenders require. And it's hard to  
18 say that, traditional crypto lenders, but be that as it may.

19 So Your Honor, we have -- I worked consensually  
20 with the Debtors and the Committee. I want to thank Mr.  
21 Koenig, Mr. Kwasteniet, Mr. Colodny, Mr. Wofford for all  
22 their assistance over the last few months in trying to get  
23 to an achievable plan. We do have a couple of issues that  
24 will need to be addressed at some point. I mean, one issue  
25 and I've raised it with Mr. Koenig and Mr. Colodny. It's

1 not a big issue, but there's -- there was supposed to be an  
2 election on the ballot form for whether the Borrower wished  
3 to repay or not which did not make it on the ballot. Some  
4 subsequent form of notice needs to be sent out to the  
5 Borrowers so that they can make that election.

6 And there are also some timing issues that need to  
7 be addressed in the plan, but I consider those minor non-  
8 substantive issues in this plan. I mean, the result that  
9 was achieved at the mediation as a result of that --

10 THE COURT: How many Borrowers are there?

11 MR. ADLER: 23,000, Your Honor. Now, when I say  
12 23,000, there are some Borrowers -- if you have Bitcoin and  
13 you had ETH, you show up twice on the spreadsheet. So when  
14 you cull all those out, it's probably more like 18,000 or  
15 so. Approximately half of them are in the United States;  
16 approximately half of them are international, with the  
17 biggest international locations being Australia, Spain. I  
18 think actually Poland is one of the largest jurisdictions  
19 and that's because the largest Borrower in this case who  
20 I've never spoken to, is apparently a resident of Poland.  
21 And you know, I mean, I think that that Europe and Australia  
22 dominate on the borrower side of the equation.

23 So, obviously we have a couple of issues to work  
24 out, but we are supportive of the plan. The voting reflects  
25 it. There have been people, Borrowers, who have asked Your

1 Honor for a ruling on the collateral and the only thing that  
2 I would say is we would ask Your Honor to limit that ruling  
3 to whether it is property of the estate or not, okay, so  
4 that we're not making any rulings about any other potential  
5 issues.

6 THE COURT: Okay, thanks, Mr. Adler.

7 MR. ADLER: Okay. Thank you, Your Honor. On that  
8 note, I will conclude.

9 THE COURT: Thank you. Thank you very much. I've  
10 said this before. I greatly appreciate what my colleague  
11 Judge Wiles did in the three-day mediation. There were lots  
12 of issues that got resolved. Essentially, it was very  
13 important to us being here today. I appreciate that.

14 All right, the Withhold Ad Hoc Group, Ms. Kovsky.

15 MS. KOVSKY-APAP: Good afternoon, Your Honor. Deb  
16 Kovsky, Troutman Pepper, on behalf of the Withhold Ad Hoc  
17 Group. As Your Honor knows, at the outset of these cases,  
18 the Withhold accountholders, including members of the  
19 Withhold Ad Hoc Group were kind of a weird no man's land on  
20 the Celsius platform. They weren't in the Earn program  
21 anymore and if the Debtors had been able to offer custody  
22 services in their states of residence, they would have been  
23 in Custody, but that wasn't the case. So instead their  
24 status was kind of ambiguous, neither fish nor fowl.

25 And the question of the status of their assets

1 could have been litigated all the way to resolution,  
2 possibly through appeals at great expense and uncertainty.  
3 Instead, the Withhold Ad Hoc Group, the Debtors, and the  
4 Committee found a more efficient pathway to deal with the  
5 complex and novel questions regarding property of the estate  
6 raised by the Withhold assets, and those discussions and  
7 pathway resulted in the Withhold settlement, a compromise  
8 that provided enhanced treatment for the Withhold  
9 accountholders while allowing a substantial bucket of assets  
10 to be treated as property of the estate.

11 And the settlement was embodied in the plan and  
12 has been overwhelmingly accepted by Class 7, the Withhold  
13 accountholders. The Withhold Ad Hoc Group appreciates the  
14 Debtors' and the Committee's willingness to work with us and  
15 to find a compromise solution that recognize the claims of  
16 the Withhold accountholders while avoiding the cost and  
17 complexity of an extended litigation.

18 Withhold Ad Hoc also appreciates the Debtors and  
19 the Committee working with us on our informal comments to  
20 the plan which obviated the need to file a formal objection.  
21 The Withhold Ad Hoc Group was concerned about the potential  
22 preclusive effect that the Debtors' calculation of  
23 withdrawal preference exposure under the plan might have.  
24 The Debtors and Committee agreed to add clarifying language  
25 that those calculations will not be binding on any defendant

1 in a subsequent avoidance action.

2 Even more importantly, the plan as it was  
3 originally solicited out appeared to give the plan  
4 administrator unfettered discretion to distribute fiat  
5 currency rather than cryptocurrency to accountholders. Now,  
6 we understand that the plan does provide for the retention  
7 of distribution agents for the purpose of distributing  
8 cryptocurrency, but those are time limited contracts and  
9 there was nothing in the plan that really pushed or  
10 encouraged the distribution of crypto rather than fiat.

11 And as Your Honor is well aware from the course of  
12 this case, and as Mr. Colodny alluded to, many  
13 accountholders feel very, very strongly about getting back  
14 crypto, not fiat currency . And this is particularly true in  
15 instances where there may be a delay in a claim becoming an  
16 allowed claim. So accountholders are very concerned about  
17 potentially not getting the benefit of the appreciation and  
18 value of crypto if the plan administrator could simply  
19 distribute fiat currency at some later point in time.

20 The Debtors and the Committee agreed to language  
21 requiring the plan administrator to use commercially  
22 reasonable efforts to make distributions in liquid  
23 cryptocurrency, rather than fiat, to the greatest extent  
24 possible. The language requires reserves on account of not  
25 yet allowed claims to be held in the form of liquid

1 cryptocurrency. And if by the time a distribution is to be  
2 made, there isn't a distribution agent around who can  
3 actually distribute crypto, the plan now requires that the  
4 crypto be converted to fiat as close to the distribution  
5 date as possible, the idea being that this would allow the  
6 amount of the fiat to mirror as closely as possible, the  
7 appreciated value of the crypto that otherwise would have  
8 been distributed.

9 And these changes provide important protections to  
10 accountholders. We really appreciate the constructive  
11 approach taken by the estate's professionals in negotiating  
12 these terms with us.

13 Finally, I wanted to say a couple of words about  
14 the ADR procedures. The Withhold Ad Hoc Group filed a  
15 reservation of rights with respect to the ADR procedures in  
16 connection with the disclosure statement hearing. Since  
17 then, we've had extended discussions with the Committee's  
18 professionals resulting in significant modifications to the  
19 proposed procedures.

20 The Committee has clarified that the procedures  
21 are not binding on anyone who did not file a proof of claim  
22 and revisions to the procedures which were filed as a  
23 redline also make it easier and more straightforward to opt  
24 out, and among other changes, make the flow of information  
25 between the parties mutual rather than one sided.



1           However, as I'm sure you'll hear more from Mr.  
2           Kleiner, the ADR procedures are not yet finalized and it  
3           does seem a little bit odd and perhaps premature for the  
4           Court to approve procedures that are still being discussed  
5           and negotiated.

6           The Withhold Ad Hoc Group did not see this as a  
7           basis to deny confirmation of a plan, particularly one with  
8           widespread support of creditors, including the members of  
9           the Withhold Ad Hoc Group themselves; however, we suggest it  
10          may make more sense to defer approval of the ADR procedures  
11          until they're more fully baked. But either way, whatever  
12          the Court rules, we will certainly continue to --

13          THE COURT: Speed up the process and finalize  
14          everything.

15          MS. KOVSKY-APAP: We are absolutely working on  
16          that. We are continuing to negotiate the procedures in good  
17          faith, exchanged emails today and we are working  
18          expeditiously. So, in conclusion, the Withhold Ad Hoc Group  
19          believes the plan is not perfect but no plan of  
20          reorganization ever is. We do believe that it is the best  
21          option under the circumstances and we are happy to join the  
22          Debtors, Committee, and other ad hoc groups in supporting  
23          it.

24          THE COURT: Thank you very much, Ms. Kovsky. All  
25          right. Next is Mr. Frishberg.

1 MR. FRISHBERG: Thank you, Your Honor. To start  
2 off with, I think everyone will agree that I'm direct and I  
3 speak my mind, so I will do so today. I believe that  
4 confirming this plan is the best path forward for creditors  
5 that we have at this time. And I'm not saying this only  
6 because I'm the PSA, I'm saying this because I truly believe  
7 it, that this is the best option we have currently.

8 The Debtors, the UCC, the U.S. Trustee, numerous  
9 regulators, all the professionals in this case, and more  
10 have done a very, very good job thus far. (indiscernible)  
11 know, this is a very complex and unusual case. The Debtors  
12 and the UCC have stated that accountholders overwhelmingly  
13 support the plan, including the visions about the EIP  
14 bonuses and releases.

15 I would like to add a bit of clarity to that.  
16 Something I have not heard mentioned thus far is that the  
17 reason people, creditors such as myself voted for it, it was  
18 the only option that was not a very bad scenario of the plan  
19 getting voted down. Customers are very openly against the  
20 overly, in my opinion, broad releases to the plan, but  
21 again, it is what it is, to (indiscernible) employees and as  
22 well in my opinion, the unnecessary (indiscernible)  
23 employees.

24 The reason they voted for it is as well as I did  
25 is because they want it to be over. An analogy that I think

1 sums this up well, is imagine that you are (indiscernible)  
2 deserted island in the middle of nowhere and then you find  
3 some moldy bread, a tiny bit of mold. You're going to eat  
4 the bread since it is better than starving to death. I know  
5 I would eat the bread and it seems about 98 percent of  
6 creditors chose to also eat the bread. Though I would love  
7 nothing more than to cut off the moldy parts which include  
8 the EIP bonuses and a few others. It's not an option, so I  
9 voted for the plan.

10 We must (audio glitch) and we must (audio glitch).  
11 This is (audio glitch) the plan being confirmed regardless  
12 of the presence of the metaphorical mold, trimming off the  
13 metaphorical small moldy parts would improve the plan, but  
14 slightly moldy bread is better than nothing in this  
15 scenario. Thank you, Your Honor.

16 THE COURT: Thank you very much, Mr. Frishberg.  
17 All right, Mr. Sabin, you're going to argue for Mr. Tuganov?  
18 Just so everybody knows, my plan is after Mr. Sabin, we have  
19 three more openings in opposition to the plan. We'll take a  
20 brief recess after Mr. Sabin and before we proceed with the  
21 remaining three. Mr. Sabin, good afternoon.

22 MR. SABIN: Thank you, Your Honor. It's a  
23 pleasure to be back here in person. It's a pleasure to  
24 hopefully soon stand here and thank many people for tireless  
25 work. I am Jeff Sabin from Venable on behalf of Ignat

1 Tuganov, a long time Earn rewards customer, creditor, one of  
2 three class representatives appointed pursuant to the now  
3 final order of this Court approving the settlement of the  
4 class proof of claim that among other things allowed  
5 noncontract claims for all accountholders.

6 And he was also and still is a party to the plan  
7 support agreement and spent the better part of his three  
8 days, and I did, too, before Judge Wiles. And you've  
9 already taken notice of the benefits of that.

10 I requested ten minutes to otherwise speak to  
11 support this plan, to cover matters material to confirmation  
12 not covered or otherwise that I thought needed to be  
13 supplemented by the very good efforts of all those who come  
14 before me, be it Debtors' counsel, UCC counsel, or other  
15 supporters. I'm happy to say that if I were a contestant on  
16 "Name That Tune," I can do it in two minutes.

17 But here goes. First and most importantly, you  
18 asked Mr. Colodny a question that I have a supplement to an  
19 answer. There is a provision in the order of approving the  
20 class settlement agreement, now final, that otherwise waived  
21 objections to otherwise trying to subordinate pursuant to  
22 510(b) any of the claims of Earn customers and/or retail  
23 borrower customers.

24 Secondly, I believe that that the plan as amended  
25 is confirmable, not only because I have confidence that the

1 record will establish by all of the witnesses and the  
2 testimony to be educed that otherwise you can make findings  
3 of fact that would be supportive of confirmation, but also  
4 by the vote itself and the use of the vote in connection  
5 with three settlements, not that you otherwise approved, but  
6 are embedded in the plan including the retail borrower  
7 settlement, which has in it as a component part not yet  
8 mentioned in the record of an additional substantive  
9 consolidation of several lenders in this case and several  
10 debtors in this case.

11 And finally and most importantly, as you've heard,  
12 Mr. Tuganov is no different than all of the other customers.  
13 He is waiting and hopefully sees the light at the end of the  
14 tunnel, indeed, that the PSA milestones of October 31 for  
15 entry of a confirmation order and a December 31, 2023  
16 effective date can be had.

17 In addition, as you heard from Mr. Colodny,  
18 there's no promise that all the conditions to the effective  
19 date can be done, but I think we are confident that the  
20 tireless efforts will continue, not just of the Debtors and  
21 the Committee and the U.S. Trustee, but the regulators  
22 themselves and of course, the plan sponsor such that the  
23 transparency referred to by Mr. Koenig is indeed going to be  
24 helpful to satisfy those conditions.

25 And so, like so many others, it has been a long

1 and winding road, and as the song goes, I hope that we soon  
2 get to sing a different tune. Maybe everyone can sing happy  
3 or at least happier. Thank you, Your Honor.

4 THE COURT: Thank you very much, Mr. Sabin. All  
5 right, we are going to take -- it's 3:40. We'll take a ten-  
6 minute recess. We'll resume at 3:50 and when we resume Mr.  
7 Ubierna, you're up next, okay? All right.

8 (Recess)

9 THE COURT: Everybody can sit down. All right,  
10 the Court is back in session. Mr. Ubierna, it's your turn  
11 for an opening statement.

12 MR. UBIERNA DE LAS HERAS: Good afternoon, Your  
13 Honor. Victor Ubierna, pro se creditor. Thank you for your  
14 time. First, English is not my native language as I am from  
15 Spain. So I ask that you forgive me if I make any mistake I  
16 speak in English. During this Chapter 11 bankruptcy, I have  
17 filed some objections and joinders. Since the beginning, I  
18 believe that while other people were just complaining in  
19 social media, the way to be useful to others was to file  
20 formal documents.

21 With regard to plan confirmation, I filed an  
22 objection with Docket No. 3542. This bankruptcy have been  
23 particularly difficult for many people, so I don't object to  
24 closing this difficult chapter in their lives. I objected  
25 to two items. First, regarding the emergence incentive

1 program, I argue that insider employees already receive  
2 salaries, that they have a fiduciary duty to act in the best  
3 interest of the company, and that the bar is very low for  
4 these rewards. For example, Ferraro will receive a bonus if  
5 this Court confirms a plan before the end of October. It is  
6 obvious that a Chapter 11 CEO should be working to get a  
7 plan confirmed.

8 Furthermore, a lot of the metrics are just what  
9 they should be doing as employees. These targets are  
10 objectives that are well within the scope and scale of their  
11 existing contractual obligations to the company as  
12 stakeholders and creditors. Some items haven't got  
13 numerical targets and (indiscernible) and can be easily  
14 abused.

15 Secondly, I also believe that the releases are too  
16 broad and that creditors did not have a real chance to opt  
17 out. (audio glitch) argue that the third party releases are  
18 wholly consensual; however, evidence does not point on that  
19 direction. I want to remark that a little more than 5,000  
20 holders in voting classes that voted to accept the plan  
21 attempted to select the third-party release opt out and were  
22 not permitted to do so. How can they argue that releases  
23 are wholly consensual if 5,160 creditors are being forced  
24 into them against their will? I joined what the UST has  
25 just said about the releases.

1           Lastly, I do welcome the change that the Debtors  
2           made to the release and the exculpation provision. They  
3           clarify that what happened on the failure to file a proof of  
4           claim on the Voyager bankruptcy is not covered by those  
5           provisions. That is a good change in response to my  
6           objection. Thank you. Nothing more for today, Your Honor.

7           THE COURT: Thank you very much, Mr. Ubierna.  
8           You've been a regular participant in the hearings and I  
9           appreciate hearing from you. Thank you. All right, counsel  
10          for Pharos Fund.

11          MR. NOSKOV: Your Honor, Victor Noskov, Quinn  
12          Emanuel on behalf of Pharos. We're here today for an  
13          objection on the best interest of creditors test. The test  
14          is simple. It's simply whether the Debtors would realize  
15          more value under Chapter 7 than what they would realize  
16          under the plan as proposed by the Debtors.

17          As Your Honor aptly noted with regard to the CEL  
18          token valuation, the test, the burden is on the Debtors to  
19          prove that the test is satisfied and as long as the plan is  
20          not unanimous, and here our client has objected to the plan,  
21          they have to carry that burden.

22          Our simple position is that they have not, that  
23          there's insufficient evidence in support of the best  
24          interest of creditors test here. And that is for two  
25          reasons. On the one hand, in support of their plan, the



1 Debtors submit a liquidation analysis that is severely  
2 depressed.

3 THE COURT: It usually is.

4 MR. NOSKOV: Correct, Your Honor, but usually with  
5 justification. And in our view, the evidence this week will  
6 show that the severely depressed value which is by about 80  
7 to 85 percent of the plan value -- and not just compared to  
8 the going concern value, but also to the orderly winddown  
9 value scenario under the plan, it's -- the Chapter 7 process  
10 is severely depressed.

11 I think the only real argument that is in the  
12 declaration supporting such devaluation of the liquidation  
13 analysis is a view that's expressed that a Chapter 7 Trustee  
14 whose fiduciary duty it is to maximize value of the estate  
15 for the creditors and who's empowered by the Bankruptcy Code  
16 to do so would not be able to run a proper sale process of  
17 these particular assets. And we intend to probe why the  
18 Debtors have arrived at that conclusion throughout this  
19 week, Your Honor.

20 THE COURT: You placed zero value on Newco.

21 MR. NOSKOV: I can get to Newco as well, Your  
22 Honor. I'm not so sure that we place zero value.

23 THE COURT: What value do you place on Newco?

24 MR. NOSKOV: We -- well, I think the question,  
25 Your Honor is whether the Debtors place the correct value --

1 THE COURT: I understand that, but do you place  
2 any value on Newco?

3 MR. NOSKOV: Yes, we --

4 THE COURT: What value do you place on Newco?

5 MR. NOSKOV: We think that the value -- that the -  
6 - we don't disagree with the inherent value that the Debtors  
7 present. We just think it should be severely discounted or  
8 discounted at all based on the several risk factors that the  
9 Debtors have themselves identified in these cases including  
10 in the disclosure statement.

11 THE COURT: So you're not disputing the value they  
12 place on it, but you, you believe it should be discounted  
13 from the value they placed on it?

14 MR. NOSKOV: I believe the way that they've  
15 arrived at the value, which again, will come in through  
16 evidence and we will probe exactly how they did so because  
17 we think the disclosure has not been sufficient, we believe  
18 that that testimony will show that they did not adequately  
19 discount it based on risk factors that they have identified  
20 themselves and based on how creditors have spoken in  
21 choosing their options under the plan.

22 So with that, Your Honor, I think that goes to the  
23 Newco value. That has nothing to do with the orderly  
24 winddown scenario which the Debtors propose, which is a  
25 value of \$450 million for the assets, which compared to the

1 liquidation value, which is about 88, is significantly  
2 higher and I'm not sure why --

3 THE COURT: But you agree, I take it, that a  
4 comparator has to be the liquidation value, not the orderly  
5 winddown value, the comparator for the best interest test --

6 MR. NOSKOV: The best interest test should compare  
7 what would happen in a Chapter 7, the hypothetical Chapter 7  
8 proceeding, versus the winddown value or the plan value,  
9 whichever one is more likely. It's a difficult comparison  
10 and we'll probe which one is really appropriate, but yes,  
11 it's what would happen in a Chapter 7 value, but I don't  
12 think that it's appropriate to devalue what would happen in  
13 a Chapter 7 by as much as the Debtors have done here. There  
14 are tools at the behest of the Chapter 7 Trustee that --

15 THE COURT: May I ask, do you plan to call any  
16 witnesses on liquidation value?

17 MR. NOSKOV: We ourselves are not in a position to  
18 put in witnesses ourselves. To the extent that the Court  
19 would be willing to override the deadlines that have  
20 occurred --

21 THE COURT: No, I -- the deadlines are the  
22 deadlines, but the deadline for those to submit direct  
23 written testimony in opposition to the plan hasn't run yet.

24 MR. NOSKOV: The deadline, I believe, Your Honor,  
25 for experts has passed and our client was not in a position

1 to do so. To the extent that Your Honor suggests we can put  
2 in affirmative evidence, we'd be glad to do so.

3 THE COURT: Bear with me a second. The order  
4 establishing case management procedures for the confirmation  
5 hearing is ECF 3478. In Paragraph 4 on page 3, says, "On or  
6 before 12 noon October 11th, 2023, all parties in interest  
7 shall file and docket written direct testimony under oath  
8 and copies of exhibits that they expect to offer in  
9 opposition to confirmation."

10 MR. NOSKOV: Your Honor, that that comes as a  
11 surprise to me and if that's the case --

12 THE COURT: It's on the docket. That's been --  
13 you know, this order was entered on September 15th because I  
14 wanted to be sure everybody knew when they had to put in  
15 evidence.

16 MR. NOSKOV: I appreciate you pointing us to that  
17 order, Your Honor, and certainly something that we will  
18 consider. But my point today is only --

19 THE COURT: Here's what I want to know.

20 MR. NOSKOV: Sure.

21 THE COURT: Do you plan[ to offer evidence or  
22 simply to cross examine the Debtors' witnesses -- Debtor and  
23 the Committee's witnesses?

24 MR. NOSKOV: We certainly intend to cross examine  
25 the Debtors' witnesses, Your Honor. Our client, given the

1 situation -- and certainly I can explain what it is --

2 THE COURT: I'm not interested in your client's  
3 situation --

4 MR. NOSKOV: -- has not, to this date, been able  
5 to -- we, with the client, have not gotten to a point where  
6 we can put in evidence affirmatively, but we may, Your  
7 Honor.

8 THE COURT: That's fine. You can cross examine  
9 their experts, but I just wanted to know -- October 11th was  
10 the deadline for anybody in opposition to confirmation to  
11 put in written evidence, and I was trying to ascertain  
12 whether it's your expectation that you're going to offer  
13 evidence by October 11, written evidence.

14 MR. NOSKOV: Your Honor, if I may, may I reserve  
15 on that and answer and --

16 THE COURT: Yes. The deadline hasn't come yet.

17 MR. NOSKOV: Thank you very much. Getting back to  
18 regardless of affirmative evidence, which we may or may not  
19 put forward, we think that on their own, the disclosures  
20 that are provided by the Debtors are insufficient to support  
21 the analysis that they provided. I think on the one hand,  
22 they depress value of a Chapter 7 process which actually  
23 Courts have called an orderly winddown just the same as what  
24 they're proposing with the orderly winddown scenario.

25 We think that the Chapter 7 Trustee is well within

1 its power to run a sophisticated process and so that  
2 discount is much too low. And on the other side of the  
3 equation, we think that appropriate discounts have not been  
4 applied to the value of the Newco and the other assets that  
5 would be, you know, part of the proposed plan.

6 We think that obviously the -- in some sense, the  
7 best interest of creditors is mathematical and so once you  
8 push one of those values up and one of them down, that the  
9 Debtors do not satisfy the test under 1129(a)(7), and  
10 therefore the claim should be rejected. And we think that,  
11 with just the bare conclusionary assertions that are in the  
12 declaration without further backup and without our ability  
13 to probe them in cross examination, the Debtors cannot  
14 satisfy the test.

15 THE COURT: Thank you.

16 MR. NOSKOV: Thank you.

17 THE COURT: All right. Harrison Schoenau. Is  
18 that you, Mr. Kleiner?

19 MR. KLEINER: Yes. Thank you. Thank you, Your  
20 Honor. Good afternoon.

21 THE COURT: Go ahead, Mr. Kleiner.

22 MR. KLEINER: Barry Kleiner from Kleinberg,  
23 Kaplan, Wolff & Cohen for Harrison Schoenau. I asked the  
24 Court for five minutes of time to frame our position and I  
25 very much appreciate the opportunity, but I hope to follow

1 Mr. Sabin's lead and he's much less than that.

2 To be clear, we are not objecting to the plan  
3 itself. Rather, we filed a limited response objecting  
4 solely to approval of the ADR procedures as implemented in  
5 the plan and as they apply to avoidance action defendants.  
6 We laid out the specific items we objected to in our  
7 response that was filed as Docket No. 3529 and the Debtor  
8 and Committee (indiscernible). I know that you'll read our  
9 objection and the responses, so I just wish to make two  
10 points today.

11 First, we are primarily here because the Committee  
12 has insisted on retaining the right to (indiscernible) ADR.

13 THE COURT: Say that again? I'm sorry, just  
14 repeat that.

15 MR. KLEINER: Yes, so we're primarily here because  
16 of the fact that the Committee has retained in the ADR  
17 procedures the right to force parties into ADR even if they  
18 (indiscernible). As Ms. Kovsky noted, we have been in  
19 discussion with them and the Committee, for example, has  
20 agreed that parties can't be forced to offer counter, but  
21 nonetheless, we're a bit troubled by the insistence that  
22 even if they (audio glitch) they're forced to proceed with  
23 ADR. We're troubled that that remains a (indiscernible).

24 The other point is, (audio glitch) I want to  
25 address, again, as Ms. Kovsky noted, the procedures aren't

1 yet complete. We have been, since the disclosure statement  
2 hearing -- and I don't want to understate this. In fact,  
3 the parties have been cooperating in good faith working  
4 together. The procedures that were filed in preparation for  
5 confirmation differ from those that were filed at the time  
6 disclosure statement and much progress has been made, but  
7 some items remain open.

8 Since the time we filed the objection and right  
9 now, the parties have been in communication and we expect  
10 that we'll continue to communicate and hopefully resolve  
11 these issues. But as we stand here today, it's not done yet  
12 and you don't have in front of you a final (audio glitch)  
13 procedures to approve.

14 So we ask two things. One, if Your Honor is to  
15 approve ADR (audio glitch), we understand why you might, you  
16 don't -- you approve them without the ability to force  
17 people who don't think it would be (audio glitch) to  
18 participate. And second, since the procedures still remain  
19 incomplete, you would delay approval until the parties have  
20 had a time to finish it.

21 I would just submit that there's really -- there's  
22 no urgency to this particular issue until the effective  
23 date. It's not something that has to be done by  
24 confirmation. Obviously, we would like to, but really, this  
25 is something that's only relevant when the plan is prepared



1 to go effective because it really deals with claims  
2 objections and avoidance actions which have not yet been  
3 brought. Thank you.

4 THE COURT: All right, let me just make a couple  
5 of comments on that. One, I think I commented earlier,  
6 speed it up, because assuming that the plan is confirmed, I  
7 don't want to leave issues hanging out there. Okay. This  
8 is a little different than some of the other issues, but  
9 it's my goal that everything be resolved if the plan is  
10 going to be confirmed.

11 Second, I'm not saying that the issues as to which  
12 the ADR proceeding -- procedures would apply are identical  
13 to the issues I've had in other cases, but I will just tell  
14 you, I have in large Chapter 11 cases, I have approved  
15 mandatory ADR procedures. You know, the issues here may be  
16 a little different. You may have arguments why you don't  
17 think it should be mandatory. But I -- in more than one  
18 large case, I have approved mandatory ADR procedures. Just  
19 saying that.

20 I may -- you know, you or somebody else may be  
21 able to persuade me, well, that should -- it should be  
22 different here for whatever the reason. Now is not the time  
23 to argue it. What I would urge is, and I appreciate you  
24 indicated certainly willingness to continue to do this, is  
25 try to hammer out these issues in a way that's consensual.

1 Okay?

2 MR. KLEINER: I agree, Your Honor. I think we  
3 just didn't quite have enough time --

4 THE COURT: And I understand that. Okay. All  
5 right. We have heard all of the opening statements from  
6 people who requested openings. The order that I had entered  
7 with the order in which, and the time allocation -- and I  
8 appreciate that everybody stuck to their time allocations.  
9 Very much appreciated.

10 So I wanted to talk -- and anybody who wants to be  
11 excused certainly can be. There were issues about how  
12 exhibits are going to be handled and I raised this in a  
13 prior hearing, just -- I conduct public trials. Sealing or  
14 redaction has to be an absolute minimum. And I wanted to  
15 cover some of those issues, and I didn't get a chance to  
16 look at over the weekend -- trust me, I was working on this  
17 -- the sealing motion that was made, so I want to get a  
18 better understanding.

19 So let me just make some general points on it and  
20 I'm willing to hear argument, and frequently it's the U.S.  
21 Trustee who rightfully, in my view, is defending what the  
22 Bankruptcy Code creates as the presumption that all these  
23 bankruptcy hearings are going to be public. I appreciate  
24 that. Okay. There are certain things, from what I've  
25 looked at and talked with my clerks about, that I have less

1 problem with that.

2 For example, the Debtor has unresolved litigation  
3 claims that it's pursuing. StakeHound, to -- just to name  
4 one. I certainly don't think that the Debtor should be  
5 obligated to file exhibits on the public -- unredacted  
6 exhibits on the public docket that say how they internally  
7 have assessed those claims. That's just an example.

8 So yes, there are things that should be redacted.  
9 How we deal with it during the hearing is -- also can be an  
10 issue. When I've had in other cases in trial where we don't  
11 -- where a witness is testifying and involves some redacted  
12 documents, we've usually tried to keep the test -- they've  
13 been directed, don't talk about the numbers that have been  
14 redacted, talk more generally, including a cross  
15 examination.

16 So yes, I have dealt with it in the past. So I  
17 would like to get a better idea. I guess the thing -- and I  
18 said this at the last hearing we had, when I heard that the  
19 Debtor was proposing a link on the docket that required  
20 people to sign a confidentiality agreement, that was  
21 unacceptable to me. So -- but go ahead.

22 MR. McCARRICK: Yes, Your Honor. The amended --

23 THE COURT: -- identify yourself.

24 MR. McCARRICK: I'm sorry. T.J. McCarrick,  
25 Kirkland & Ellis, on behalf of the Debtors. The Debtors

1 filed an amended motion to seal at Docket No. 3644. It  
2 supersedes the initial --

3 THE COURT: Okay.

4 MR. McCARRICK: -- request for sealing at Docket  
5 No. 3635. We've substantially narrowed the scope of  
6 information on the exhibit list that we seek to seal. It's  
7 only certain cells on four exhibits and candidly, Your  
8 Honor, it's not even clear that those are going to be  
9 offered into evidence. So I don't expect this is going to  
10 be an issue to your practical point of whether or you'll  
11 have to seal the courtroom or how we address it.

12 There are four Excels and there are tabs. So  
13 Exhibit 53, it's the Coin Manual Adjustment tab and it cells  
14 B15, B17, E15, to E17. For Exhibit 55, it's the Coin Manual  
15 Adjustments tab and cells B14 to B16, B101 to B103, E14 to  
16 E16, and E101 to E103. For Exhibit 56, again it's the Coin  
17 Manual Adjustments tab and it cells B14 to B16, B101 to  
18 B103, E14 to E16, and E101 to E103. And finally, it's  
19 Exhibit 62, it's the Coin Manual Adjustments tab, the  
20 Comments column and the CBP Illustrative Recovery tab, cells  
21 K55 to K57.

22 And what we're dealing with here, Your Honor, it's  
23 relating to litigation and asset recovery assessments. And  
24 so the redactions are pretty slim at this point.

25 THE COURT: Here's what I would ask you to do.

1 Maybe you've done it already. Confer with the Committee and  
2 the U.S. Trustee, and let's see if those parties are in  
3 agreement about it, and if they are, then I'm okay with  
4 sealing -- or redaction. It's not wholesale sealing, it's  
5 redacting certain cells -- subject to further order of the  
6 Court so that if evidence develops in a way that I -- that,  
7 you know, we have to address it, we'll address it.

8 But if the U.S. Trustee, the Committee and the  
9 Debtors agree on these redactions, we go forward on that  
10 basis subject to any subsequent Court ruling, which in  
11 principle what you describe, I understand the reason for  
12 doing that and I'm fine with it, okay. But I want you to  
13 have a discussion with the U.S. Trustee about it.

14 MR. McCARRICK: Yes, Your Honor.

15 THE COURT: Because what I found is they're the  
16 only ones who really try to protect the public interest and  
17 disclosure of what happens. Okay.

18 MR. McCARRICK: That's it, Your Honor.

19 THE COURT: Okay. I guess it was PII and --

20 MR. McCARRICK: Yeah, the --

21 THE COURT: The PII, I think I already said,  
22 absolutely should be redacted.

23 MR. McCARRICK: Yes. Just, last, one housekeeping  
24 matter. To the extent that the Debtors are going to use  
25 demonstratives with any of their exhibits, do you want those

1 filed 5 p.m. the docket the day before or just use them in  
2 Court?

3 THE COURT: I would like them filed before, for  
4 this reason. Obviously, we start the evidence tomorrow.  
5 The public and the media are not permitted under new  
6 guidance from the Administrative Office of the Courts,  
7 they're not permitted -- they're only permitted to be in the  
8 courtroom or we have an overflow room if we need it, but  
9 there are parties in interest who are appearing remotely and  
10 so that we don't have any delays. If you're going to use  
11 demonstratives, post them the night before so that anybody  
12 who wants access to it can see that.

13 Demonstratives typically are not introduced in  
14 evidence. They are -- they're illustrative for purposes of  
15 testimony and used for that purpose, but it would be helpful  
16 if demonstratives are filed the -- you know, by five o'clock  
17 the day before they're going to be used.

18 MR. McCARRICK: Yes, Your Honor.

19 THE COURT: Okay? All right. So does anybody  
20 else have any other issues either about exhibits or anything  
21 else in terms of our procedures that we're going to be  
22 following during the trial? Mr. McCarrick, shouldn't have  
23 sat down so quickly.

24 MR. McCARRICK: I know. For folks who are  
25 appearing virtually who may cross examine using exhibits, I

1 guess I seek the Court's guidance on how that should be  
2 handled because the witness may not have a copy. As far as  
3 I can tell, there's been no exhibit list disclosed by anyone  
4 other than the Committee and the Debtors. That's just the  
5 one practical question I have.

6 THE COURT: That's true. I would say this. If  
7 anyone who is appearing remotely, any party in interest  
8 appearing remotely, who wishes to cross examine any of the  
9 witnesses and wishes to use exhibits that are not already  
10 marked, they should also post them on the docket by 5 p.m.  
11 the day before a witness is testifying. Okay. So there  
12 often is an exception for impeachment exhibits, but we're  
13 not -- because we're doing this with remote access and --  
14 look, I've appreciated, you know, at one point early in this  
15 case, we had 786 people on Zoom.

16 And what it is demonstrated to me, is it has  
17 really helped with the transparency of the bankruptcy  
18 proceeding. If there are people on Zoom who are going to  
19 cross examine witnesses, they'll have to, you know, use the  
20 raise hand function to be recognized to do that. Obviously,  
21 cross examination needs to be limited to the scope of the  
22 direct examination that's occurred, but I want to be -- give  
23 some leeway to people, particularly nonlawyers in their  
24 examination. I certainly reserve the right either to  
25 sustain objections that are made or myself limit the cross

1 examination that can be done.

2 But it's a new world with us trying to do --  
3 particularly in a case like this where there are so many  
4 creditors who are not in the New York metropolitan area who  
5 want to appear, and if they wish to cross examine. So, yes,  
6 I'm directing that if you're going to appear and cross  
7 examine remotely, if you intend to use any exhibits, you're  
8 going to need to post them as proposed cross examination  
9 exhibits by 5 p.m. the day before a witness testifies, which  
10 necessarily is going to require that the parties here who  
11 are calling witnesses disclose the day before who the  
12 witnesses are going to be for the next day.

13 MR. McCARRICK: Yes, Your Honor. Do you want us  
14 to file that on the docket?

15 THE COURT: I think you should, because again,  
16 we've got people appearing remotely.

17 MR. McCARRICK: Yes, Your Honor.

18 THE COURT: And I think in response to a question  
19 for clarification that the Debtors had asked, if, rather  
20 than having to recall witnesses during the opposition case,  
21 you know, I'm not going to limit cross examination to the  
22 scope of the direct, if someone was planning on calling  
23 someone as part of their main case. There's no jury. We'll  
24 do it. I want, to the fullest extent possible, that a  
25 witness when they testify and they're done, they're done.



1 They don't have to come back. So, okay. Any other  
2 questions, Mr. McCarrick?

3 MR. McCARRICK: I can't promise in between here  
4 and there, but thank you.

5 THE COURT: Good exercise. Anybody else have any  
6 other issues they want to raise about how we're going to be  
7 proceeding? Mr. Koenig, who are we going to hear from  
8 tomorrow? Well, I picked on you, Mr. Koenig, but if  
9 somebody else -- if Mr. McCarrick wants to get up again, he  
10 can.

11 MR. McCARRICK: This has been very special for me,  
12 yes, Your Honor.

13 THE COURT: I'm sure.

14 MR. McCARRICK: We anticipate tomorrow calling Mr.  
15 Ferraro, Mr. Kokinos, potentially Mr. Kielty, Mr. Cohen. I  
16 would expect that would --

17 THE COURT: Okay.

18 MR. McCARRICK: -- likely be it. Those are at  
19 least four.

20 THE COURT: So my expectation, we're going to  
21 start at nine. We'll take a recess. We'll take one break  
22 in the morning and then a lunch break and then we'll  
23 continue probably until five o'clock is my expectation. My  
24 pattern has been that if a witness is almost done for the  
25 day, we'll go late. Okay, try -- so they don't have to come

1 back the next morning. Okay?

2 MR. McCARRICK: Thank you again, Your Honor.

3 THE COURT: Go ahead and sit down again, Mr.

4 McCarrick. Anybody have a question for Mr. McCarrick, if we  
5 want him to come back. All right. I will see you all in  
6 the morning, okay?

7 CLERK: Judge, there's two parties on Zoom that  
8 are -- have their hand up.

9 THE COURT: Okay, I didn't see that. Okay.

10 CLERK: Yeah.

11 THE COURT: Yes?

12 MR. KIRSANOV: Good afternoon, Your Honor.

13 Dimitry Kirsanov, pro se creditor. I was not listed on the  
14 objections and I have concerns that involve best interest  
15 and adverse amendments to the plan after the vote, ballot  
16 valuation issues, and continued lack of clarity regarding  
17 CEL valuation and custody in Hawaii. I was wondering if I  
18 could be heard today.

19 THE COURT: Not in an opening statement. I made  
20 clear that the opening statements request had to be filed by  
21 the deadlines that I gave. I've heard everyone. I  
22 respected the time request that everyone had made. I'm not  
23 going to reopen -- this doesn't preclude you -- let me make  
24 clear. This does not preclude you from examining witnesses  
25 on these issues. The only thing that I did was fix a

1 specific date and time as a deadline for requests for  
2 opening statements.

3 So it doesn't preclude you from raising this issue  
4 during the trial, cross examining where appropriate, but no  
5 more opening statements today.

6 MR. KIRSANOV: Thank you, Your Honor.

7 THE COURT: Okay. Anybody else wish to be heard  
8 on Zoom?

9 CLERK: I don't see any additional hands, Judge.

10 THE COURT: Okay. Thank you very much. I'll see  
11 everybody in the morning.

12 (Whereupon these proceedings were concluded at  
13 4:23 PM)

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing  
transcript is a true and accurate record of the proceedings.



Sonya Ledanski Hyde

Veritext Legal Solutions

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Date: October 3, 2023

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**Exhibit C**

**October 3, 2023 Transcript (Case in Chief in Support of Plan)**

*Includes the testimony of (i) Christopher Ferraro (Celsius), (ii) Steven Kokinos (Fahrenheit), (iii) Ryan Kielty (Centerview Partners), (iv) Joel Cohen (Stout), (v) Brian Karpuk (Stretto), (vi) Alison Hoeinghaus (Alvarez & Marsal), and (vii) Mark Robinson (UCC Member).*



1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 22-10964-MG

4 - - - - - x

5 In the Matter of:

6

7 CELSIUS NETWORK LLC

8

9 Debtors.

10 - - - - - x

11

12 United States Bankruptcy Court

13 One Bowling Green

14 New York, NY 10004

15

16 October 3, 2023

17 09:00 AM

18

19

20

21 B E F O R E :

22 HON Martin Glenn

23 U.S. BANKRUPTCY JUDGE

24 ECRO: Karen

25

1 HEARING re Doc# 3667 Statement / Notice of Debtors  
2 Confirmation Hearing Demonstratives For October 3, 2023  
3 (related document(s) 3609, 3577)  
4

5 Doc# 3668 Statement / Notice of Debtors Confirmation Hearing  
6 Witnesses for October 3, 2023 (related document(s) 3609, 3577  
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24 Transcribed by: Dani Rossean  
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14 Sharon Dow

15 Simon Dixon

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P R O C E E D I N G S

THE COURT: Please be seated. All right. Good morning, everyone. Before we start with the testimony, I wanted to raise one thing with the Debtor, the Committee, the US Trustee. The Consumer Privacy Ombudsman, Lucy Thomson, filed a request to be able to testify remotely for cross-examination. Her -- the document is ECF Document 3589. She attached to it -- there's the letter requesting permission. There is a copy of her purported direct testimony. I'm assuming she's not a lawyer.

What she submitted as her testimony is not under oath. The -- I don't know, the thrust of what her purported -- of her statement was that she's continuing to work with the Debtors and Committee, I guess the US Trustee, in trying to finalize privacy arrangements, primarily with NewCo. Rule 43(A) of the Federal Rules of Civil Procedure is applicable with respect to whether or not someone can appear remotely for testimony. What I would ask is that between the Debtor, the Committee, and the US Trustee, reach out to Ms. Thomson. Her letter request doesn't satisfy the requirements. It just would be -- she's in Washington. It would be inconvenient for her to come. I understand.

What's not clear to me is whether the Debtor or the Committee or the US Trustee intends to cross-examine

1 her. It may well be that there isn't going to be any cross-  
2 examination, in which case, her direct -- assuming that  
3 she'll need to correct that so that it's under oath -- would  
4 come in. But if there's going to be cross-examination, she's  
5 going to have to come. I mean, just the inconvenience, I  
6 mean, is not sufficient. If you all agree that she's not  
7 going to be cross-examined -- I understand a lot of other  
8 parties and interests. But if the Debtor, the Committee and  
9 the US Trustee agree that she can submit her testimony,  
10 direct testimony without cross-examination, I'm not going to  
11 require her to come to New York. But she's going to have to  
12 fix it and put it under oath. But reach out and see whether  
13 -- I don't know. Mr. Koenig, what's the status of efforts to  
14 resolve matters with Ms. Thomson?

15 MR. KOENIG: Good morning, Your Honor.

16 THE COURT: Mr. McCarrick's running up here. I  
17 don't know whether --

18 MR. KOENIG: Good morning, Your Honor.

19 THE COURT: It's his exercise for the day, but --  
20 go ahead. Good morning.

21 MR. KOENIG: Good morning, Your Honor. Chris  
22 Koenig, Kirkland & Ellis, for the Debtors. We've been  
23 working with Ms. Thomson collaboratively to try to resolve  
24 matters, and we have included language in the Proposed  
25 Confirmation Order that we proposed with her. We've been

1 working with her. I don't believe she's signed off on it  
2 yet. We're also working on a formal privacy policy that  
3 would apply to NewCo. So it's all in motion.

4 THE COURT: Okay.

5 MR. KOENIG: I would say well in motion, but it's  
6 not quite done yet.

7 THE COURT: So I -- the three parties who I  
8 suggested, see whether you can get things resolved.

9 MR. KOENIG: We certainly will.

10 THE COURT: I don't know if there's any particular  
11 order in which she needs to testify, but it wasn't clear to  
12 me that there would be cross-examination. Hopefully you'll  
13 be able to resolve the issue. I mean, she raises serious  
14 issues. I'm not questioning that.

15 MR. KOENIG: No, we certainly agree. We've been  
16 working with her to try to address her issues and, you know,  
17 fulfill, make sure that she can fulfill her mandate. Thank  
18 you, Your Honor.

19 THE COURT: Okay. Thank you very much. All right,  
20 let's begin with -- is there -- let me ask this, is there  
21 anything that you wish to raise before we call the first  
22 witness?

23 MR. BROWN: No, Your Honor. Ready to proceed.

24 THE COURT: You have to identify yourself as well.

25 MR. BROWN: Good morning, Your Honor. Judson

1 Brown from Kirkland & Ellis on behalf of the Debtors. We'll  
2 begin with Mr. Chris Ferraro this morning.

3 THE COURT: Okay. Come on up, Mr. Ferraro.

4 MR. BROWN: Your Honor, while Mr. Ferraro's  
5 getting situated, we have a binder with various exhibits  
6 that we might use, including Mr. Ferraro's Declarations. If  
7 I might hand those to Mr. Ferraro in Court while he's  
8 getting situated.

9 THE COURT: Sure. Please.

10 MR. BROWN: Thank you.

11 THE COURT: Carrie, if you would -- Mr. Ferraro,  
12 if you would, raise your right hand.

13 THE CLERK: Do you solemnly swear or affirm all  
14 the testimony you're about to give before this Court is the  
15 truth and the whole truth?

16 MR. FERRARO: I do.

17 THE COURT: Thank you.

18 MR. BROWN: Your Honor, may I proceed?

19 THE COURT: Please.

20 MR. BROWN: Good morning, Mr. Ferraro. I know  
21 you've testified in front of this Court many times, both  
22 formally and informally. But can you please introduce  
23 yourself for the record?

24 MR. FERRARO: Yeah, good morning, everybody. My  
25 name is Christopher Ferraro. I am the acting CEO, Chief



1 Restructuring Officer, and Chief Financial Officer of  
2 Celsius. I've been with the company since March of 2022. I  
3 originally started as the Head of Planning and Analysis and  
4 Investor Relations. I became the CFO the day before the  
5 Petition, and I became the CEO, Acting CEO in late  
6 September. I come off of a almost two-decade career with JP  
7 Morgan where I was a Managing Director, and ran Global  
8 Financial Analysis, as well as a Senior Managing Director at  
9 Cerberus.

10 MR. BROWN: And can you just briefly describe some  
11 of your responsibilities as the Interim CEO and the CRO of  
12 the Debtors over the course of the last year plus?

13 MR. FERRARO: Yeah. From the very beginning, I hit  
14 the ground running. I think it was very important that we  
15 were aligned with the Committee. So, in conversations with  
16 the Committee chairs, we were able to kind of find out the  
17 trajectory of this case -- where they were, where we were.  
18 We started off in, you know, my tenure in October by really  
19 kicking the tires. There was a sales marketing process that  
20 was just kicking off, that Ryan Kielty will talk about  
21 later. But -- and we were also internally looking at a  
22 standalone plan. So we were spending a ton of time trying to  
23 develop a standalone plan while that process was going.

24 When bids of interest came back, you know, I think  
25 we all determined that the best course of action was a

1 sponsor plan, and that led us to the stalking horse,  
2 NovaWulf, and then we went into the auction. The auction  
3 lasted a long time. I mean, this was on the back of, I  
4 think, seven, eight-month sales and marketing process, four  
5 weeks. We were able to drive a lot, preserve a lot of value  
6 for the creditors. I think we distributed a hundred, we had  
7 the ability to distribute hundreds of millions more  
8 cryptocurrency, and lower management fees. That all led into  
9 kind of naming Fahrenheit. We felt that they had the best  
10 plan and the best management team. And then, we went into  
11 kind of a plain sponsor agreement, settlements, et cetera,  
12 leading up to everything to where we are today.

13 MR. BROWN: We'll get into a little bit more of  
14 those details. Just want to take a minute. Over the course  
15 of the Debtors' restructuring, you submitted various  
16 declarations in support of various requests and motions that  
17 the Debtors have put before the Court, correct?

18 MR. FERRARO: Yes.

19 MR. BROWN: I want to take a look at a couple of  
20 those this morning. I want to start, in your binder, it's  
21 Celsius Exhibit 44. If you can flip to that, please,  
22 Mr. Ferraro.

23 MR. FERRARO: I'm there.

24 MR. BROWN: Do you recognize this Declaration,  
25 sir?

1 MR. FERRARO: Yes.

2 MR. BROWN: And is this the Declaration that you  
3 submitted in support of confirmation?

4 MR. FERRARO: Yes.

5 MR. BROWN: And if you'll flip to the last page,  
6 is that your signature, Mr. Ferraro?

7 MR. FERRARO: Yes, it is.

8 MR. BROWN: And is everything in this Declaration  
9 true and accurate to the best of your knowledge,  
10 Mr. Ferraro?

11 MR. FERRARO: Yes, it is.

12 MR. BROWN: You adopt it as your testimony here  
13 today?

14 MR. FERRARO: Yes, I do.

15 MR. BROWN: Your Honor, the Debtors would move  
16 Celsius Exhibit 44 into evidence.

17 THE COURT: Any objections? Exhibit 44 is in  
18 evidence.

19 (Debtors' Exhibit 44 Received into Evidence)

20 MR. BROWN: Now, Mr. Ferraro, I want to take a  
21 look at another Declaration you submitted in this case. It  
22 is Celsius Exhibit 34. It is also in your binder. If you'll  
23 flip to it and let me know when you're there.

24 MR. FERRARO: I'm there.

25 MR. BROWN: Do you recognize this document, sir?

1 MR. FERRARO: I do.

2 MR. BROWN: What is it?

3 MR. FERRARO: This is the -- my Declaration in  
4 Support of a Backup Plan Sponsor.

5 MR. BROWN: And if we flip to the last page there,  
6 the last substantive page, is that your signature, sir?

7 MR. FERRARO: Yes, it is.

8 MR. BROWN: And is everything in this Declaration  
9 true and accurate to the best of your knowledge?

10 MR. FERRARO: Yes, it is.

11 MR. BROWN: And you adopt that as additional  
12 portions of your testimony here today, sir?

13 MR. FERRARO: Yes, I do.

14 MR. BROWN: Your Honor, the Debtors would move  
15 Celsius Exhibit 34 into evidence.

16 THE COURT: Any objections? It's admitted into  
17 evidence.

18 (Debtors' Exhibit 34 Received into Evidence)

19 MR. BROWN: And lastly, Mr. Ferraro, I want to  
20 look at one more Declaration you submitted in this case. It  
21 is in your binder. It's Celsius Exhibit 37. If you can flip  
22 there for me.

23 MR. FERRARO: I'm there.

24 MR. BROWN: And do you recognize that Declaration?

25 MR. FERRARO: Yes, I do.

1 MR. BROWN: And what is it?

2 MR. FERRARO: This is my Declaration in Support of  
3 the Proposed CEL Token Settlement.

4 MR. BROWN: And if you flip to -- do you see at  
5 the top there's a written -- it's got page number out of  
6 147. You see where I'm at?

7 MR. FERRARO: Yeah, I do.

8 MR. BROWN: If you flip to Page 13 of 147, is that  
9 your signature?

10 MR. FERRARO: Yes, it is.

11 MR. BROWN: And are the contents of this  
12 Declaration true and accurate to the best of your knowledge?

13 MR. FERRARO: Yes, they are.

14 MR. BROWN: And do you adopt that as additional  
15 portions of your direct testimony here today, sir?

16 MR. FERRARO: I do.

17 MR. BROWN: Your Honor, the Debtors would move  
18 Celsius Exhibit 37 into evidence.

19 THE COURT: Any objections? All right. It's  
20 admitted into evidence as well.

21 (Debtors' Exhibit 37 Received into Evidence)

22 MR. BROWN: Thank you. Now, Mr. Ferraro, you just  
23 submitted or admitted a number of declarations. I just want  
24 to take a minute and talk about a couple of different  
25 aspects of those Declarations, just to highlight them for

1 the Court here. I want to start with confirmation. Can you  
2 just describe for the Court briefly the process that you and  
3 the Debtors and their advisors undertook to get to the  
4 proposed Plan of Confirmation before the Court today?

5 MR. FERRARO: Yeah, I mean, it -- again, it all  
6 started many, many, many months ago, as we started to wind -  
7 - kind of whittle down our options. That led into the  
8 auction. We had three qualified bidders at the auctions, all  
9 acting in good faith. Throughout the auction, we were  
10 aligned with the creditors. And the goal was always to  
11 maximize value and get out of bankruptcy as fast as  
12 possible. We continued those discussions across all of those  
13 parties -- the sponsor, the backup sponsor, the Debtors, the  
14 Committee -- throughout negotiating the contracts. You know,  
15 providing additional settlements to move these matters  
16 behind us. And that's where we are today.

17 MR. BROWN: And how would you describe the  
18 negotiations between the various parties who participated in  
19 this process along the many months, as you've described?

20 MR. FERRARO: As a guy who does not like conflict,  
21 it was not fun for me. And it went very, very slow, just  
22 like the auction. But it was fruitful, so it all worked out  
23 in the end.

24 MR. BROWN: Now, the plan, the proposed plan  
25 before the Court, includes various releases and exculpations

1 and an injunction. Are you familiar with those provisions of  
2 the plan, Mr. Ferraro?

3 MR. FERRARO: Yes, I am.

4 MR. BROWN: Can you just describe them at a high  
5 level for the court, what your understanding of them is?

6 MR. FERRARO: Yeah. I mean, these are, again,  
7 hard-fought negotiated things which consideration was  
8 exchanged. I think the, on the Debtors' piece, Debtors'  
9 release, I'd just like to say that, you know, the settlement  
10 agreement on the preference actions, I think, brings a lot  
11 of closure and comfort to people. That was very important.  
12 On the -- also on those release sides, the employees have ,  
13 you know, been through a lot in this year, in, you know,  
14 three months. I think it's important for the ones that did  
15 not commit any bad acts to be released.

16 And then there's consensual third-party releases  
17 that were part of the solicitation of ballot process. And  
18 then the exculpations is, you know, there's a lot of  
19 uncertainty in the regulatory environment. Distributing \$2  
20 billion of liquid crypto is not easy and always clear, and I  
21 think these -- that's an important protection. And then on  
22 the injunction side is the arms and legs to make sure that,  
23 you know, releases and exculpation operate and are executed.

24 MR. BROWN: From your perspective, Mr. Ferraro,  
25 are these releases -- the Debtor release, the third-party

1 release, the exculpation, the injunction -- are these  
2 appropriate and necessary provisions in the plan?

3 MR. FERRARO: Absolutely. A lot of effort,  
4 investigations went into this as well. These, like  
5 everything in this case, hard fought and highly negotiated.

6 MR. BROWN: I want to talk about another aspect of  
7 the plan. You testified a moment ago that you selected  
8 Fahrenheit to be the proposed path for emergence for  
9 reorganization for the company. Can you just describe, from  
10 your perspective, is the Fahrenheit path one that is  
11 executable? Is it feasible, in your view, Mr. Ferraro?

12 MR. FERRARO: Yeah. Let me step back and just hit  
13 some notes on the Fahrenheit plan, 'cause I think it's  
14 important. This is a -- this is a company that has a \$1.25  
15 billion balance sheet. I think Stout and Joel Cohen will  
16 come up and talk about some of that work that was done that  
17 goes into those numbers. This is -- NewCo will be a company  
18 that has \$450 of liquid crypto, that it can vest into  
19 staking, creating anywhere from 10 to 20 million dollars per  
20 year right out of the gate. It has a mining business that is  
21 healing and getting better by the day, has 125,000 rigs. No  
22 debt. It has an excellent mining manager in the US Bitcoin.  
23 I've been truly impressed, and this is one of the reasons  
24 why they were selected.

25 And, you know, I think, all in all, at the end of



1 the day, if you look at it, we've been operating in a very  
2 difficult time over the last 15 months in mining. We had  
3 positive EBITDA, adjusted EBITDA, throughout the entire  
4 time. I think it was a low point of 250,000 in December  
5 2022. Approximately 50 percent of that 20 million EBITDA  
6 over the last 15 months was made in the summer months, the  
7 three summer months. So there was a lot of effort that went  
8 into that, risk management, hedging, et cetera, and I think  
9 we're delivering a great set of assets to the NewCo. And  
10 this should be a company that has a great future.

11 MR. BROWN: So I just want to tease that out for a  
12 second, Mr. Ferraro. Did you -- were you saying that the  
13 mining business itself had generated adjusted EBITDA over  
14 the course of restructuring of approximately \$20 million?

15 MR. FERRARO: Yeah, that's correct.

16 MR. BROWN: And did you say that approximately 10  
17 million of that alone, approximately half of it, was  
18 generated just in the summer months?

19 MR. FERRARO: That's correct.

20 MR. BROWN: And so, what does that suggest to you  
21 for the future of the mining business going forward under  
22 Fahrenheit's operation?

23 MR. FERRARO: Significant earnings power. No debt.  
24 Ability, downside protection. It's important for everybody  
25 to understand that in mining, if your marginal costs are

1 higher than your marginal revenue, you curtail. So your  
2 downside protection is kind of limited to your OpEx, your,  
3 you know, fixed costs and such. So, you know, it's a strong  
4 balance sheet with a very, you know, stable business from  
5 the standpoint of minimizing losses.

6 MR. BROWN: Now, if the Fahrenheit path is not  
7 executable for whatever reason -- regulatory concern,  
8 whatever -- what's the Debtors' alternative, Mr. Ferraro?

9 MR. FERRARO: Yeah, so in our plan there is a  
10 backup bid, with the backup sponsor being the BRIC. And we -  
11 - given all the uncertainties in the regulatory landscape,  
12 the volatility of the asset, et cetera, we thought it was  
13 incredibly important to have a backup bid. We want to return  
14 value to customers as soon as possible. They need the  
15 liquidity. And part of the reason to have this backup bid  
16 was so that we could tip it and not have to spend months  
17 kind of looking for somebody to help us with this. This is a  
18 different structure, I think it has a very different  
19 regulatory kind of risk to it. So, we thought that this made  
20 a lot of sense, given the fact that, you know, bankruptcy's  
21 expensive and we want to return value.

22 MR. BROWN: Now, I want to switch gears for a  
23 second. We admitted your Declaration concerning the CEL  
24 Token. I want to talk about that for just a second. In that  
25 Declaration, did you identify a market price for CEL Token

1 as of the pause date?

2 MR. FERRARO: Yes, 12:00 p.m. Eastern on the pause  
3 date, .28 cents.

4 MR. BROWN: And just so the record's clear, I  
5 think we all know what it is, but can you just describe what  
6 a pause date is?

7 MR. FERRARO: June 12th, 2022.

8 MR. BROWN: And what happens?

9 MR. FERRARO: We pause withdrawals, swaps,  
10 transfers, et cetera.

11 MR. BROWN: And the market price of the CEL Token  
12 at the end of the day on the pause was what, Mr. Ferraro?

13 MR. FERRARO: It was .28 cents.

14 MR. BROWN: Okay. Now, I want to talk about some  
15 of the events that led up to that pause. And to do that, I  
16 want to look at a couple of exhibits in the binder. I want  
17 to start with Exhibit 69. And Your Honor, I want to pause  
18 here and note that this exhibit was added to the Debtors'  
19 Exhibit List in an Amended Exhibit List filed last night. I  
20 do not believe you have a hard copy in your binder, but I  
21 have some for you. May I approach?

22 THE COURT: Yes, please. Thank you.

23 MR. BROWN: Mr. Ferraro, are you at Celsius  
24 Exhibit 69 in your binder?

25 MR. FERRARO: Yes, I am.

1 MR. BROWN: And this is a pleading filed on the  
2 docket in this case, and the caption says 'Notice of  
3 Consensual Resolution of Government Investigations.' Do you  
4 see that?

5 MR. FERRARO: Yes.

6 MR. BROWN: I want to look at one particular  
7 exhibit to this pleading. It's back on Page 6, is where it  
8 begins.

9 THE COURT: What page numbers -- are you using the  
10 page numbers at the bottom of the page or the page up?

11 MR. BROWN: At the top, Your Honor. And I will  
12 clarify that for the record. Mr. Ferraro, you see the ribbon  
13 at the top? Let's go to Page 6 of 233.

14 MR. FERRARO: I'm there.

15 MR. BROWN: And do you recognize this document,  
16 sir?

17 MR. FERRARO: Yes, I do.

18 MR. BROWN: What is it?

19 MR. FERRARO: This is a Non-Prosecution Agreement  
20 between Celsius and the Government.

21 MR. BROWN: And does this Agreement continue from  
22 Page 6 over through Page 10 of 233?

23 MR. FERRARO: Yes.

24 MR. BROWN: And on Page 10 of 233, is that your  
25 signature, Mr. Ferraro?

1 MR. FERRARO: Yes, it is. Yes.

2 MR. BROWN: Did you sign this Non-Prosecution  
3 Agreement on behalf of Celsius?

4 MR. FERRARO: Yes, I did.

5 MR. BROWN: Is this a fair and accurate copy of  
6 the Non-Prosecution Agreement that you executed,  
7 Mr. Ferraro?

8 MR. FERRARO: To the best of my knowledge, yes, it  
9 is.

10 MR. BROWN: Your Honor, the Debtors would move --  
11 I really just want to move Pages 6 through 10 of Exhibit 69  
12 into evidence. And we can supply the Court with just those  
13 limited pages, if you would like. But I want to move those  
14 five pages, 6 through 10, into evidence.

15 THE COURT: Any objections? Pages 6 through 10 of  
16 the 233-page document, which is ECF 3293, are admitted in  
17 evidence.

18 (Debtors' Exhibit 69 Pages 6 Through 10 Received  
19 into Evidence)

20 MR. BROWN: Thank you, Your Honor. Now,  
21 Mr. Ferraro, let's go back to the first page of this Non-  
22 Prosecution Agreement. Can you please just review to  
23 yourself the first paragraph of the Agreement, let me know  
24 when you're done.

25 MR. FERRARO: Yeah, I've read it.

1 MR. BROWN: And do you see where it talks about a  
2 scheme to defraud investors by Celsius?

3 MR. FERRARO: Yes, I do.

4 MR. BROWN: And what does this Non-Prosecution  
5 describe as the scheme to defraud investors, sir?

6 MR. FERRARO: In non-legal terms, making false  
7 statements, misrepresentations and manipulating CEL Token  
8 price.

9 MR. BROWN: Now, I want to look at the last  
10 exhibit in your binder. Mr. Ferraro, it is on the tab UCC  
11 195. This is a document on the Unsecured Creditor Committee  
12 Exhibit List at 195. Do you have that document?

13 MR. FERRARO: Yes, I do.

14 MR. BROWN: Do you recognize it?

15 MR. FERRARO: Yes, I do.

16 MR. BROWN: What is it?

17 MR. FERRARO: This is the Statement of Facts  
18 Related to the Non-Prosecution Agreement.

19 MR. BROWN: And just so we're clear, the Non-  
20 Prosecution agreement that we just -- the five pages of  
21 Exhibit 69 that were just admitted into evidence had, as an  
22 attachment, this Statement of Facts?

23 MR. FERRARO: Yes.

24 MR. BROWN: And UCC 195 is the Statement of Facts  
25 that was attached to the Non-Prosecution Agreement?

1 MR. FERRARO: Yes, it is.

2 MR. BROWN: And are you familiar with the  
3 Statement of Facts, Mr. Ferraro?

4 MR. FERRARO: Yes. Yes, I am.

5 MR. BROWN: Did you review them in conjunction  
6 with executing the Non-Prosecution Agreement?

7 MR. FERRARO: Yes, I did.

8 MR. BROWN: Are these a fair and accurate copy of  
9 the Statement of Facts attached to the Non-Prosecution  
10 Agreement?

11 MR. FERRARO: Yes, yes, they are.

12 MR. BROWN: Your Honor, the Debtors would move UCC  
13 Exhibit 195 into evidence.

14 THE COURT: Any objections? All right, UCC 195 is  
15 admitted into evidence.

16 (Debtors' Exhibit UCC 195 Received into Evidence)

17 MR. BROWN: Now, Mr. Ferraro, I want to just ask  
18 you, you talked about the market price that you identified  
19 for CEL, CEL Token, as of the pause date. Are you -- from  
20 your perspective at the company, as an executive at Celsius,  
21 are you aware of any evidence, anything that would have led  
22 the price, the value of CEL, the CEL Token, to increase from  
23 the pause date to the petition date?

24 MR. FERRARO: So I'll start by saying I'm not a  
25 valuation expert. I worked at a bank for almost 20 years,

1 but I was not in valuation control, but I was around these  
2 processes for a long part of my career. My belief is simple.  
3 Celsius. in the springtime, was facing a lot of pressures.  
4 The crypto industry was facing a lot of pressures. There was  
5 a large selloff. Leading up to the pause date, CEL Token had  
6 plummeted quite a bit in value up until that point. I think  
7 it was .36 cents where it opened. We talked about how it  
8 closed at .28. I look at a couple price points during that  
9 day.

10 When the Tweet went out about the pause, I think  
11 it was around 10:00 at night, the price was .25 cents.  
12 Shortly thereafter, the price went down to .15 cents, and  
13 then it bounced back to the .28 cents. Between the pause and  
14 the petition it went from 28 to 81. This is on the back of a  
15 month of nothing but negative news about Celsius and the  
16 industry. Bitcoin sold off 25 percent at that time period.  
17 It's hard for me understand a token that is represented and  
18 marketed as a utility token in which the disclosure  
19 statements say that if the platform were to cease to  
20 operate, it could become worthless, it's hard for me to  
21 believe why it would go up.

22 MR. BROWN: So I might have misheard you,  
23 Mr. Ferrao. Did you say between the pause and the petition,  
24 CEL Token went from 25 to 81? I might have mis --

25 MR. FERRARO: 28 to 81.



1 MR. BROWN: 28 to 81.

2 MR. FERRARO: Yeah.

3 MR. BROWN: And --

4 THE COURT: But it went from 25 down to -- it went  
5 28 to 25, then to 81.

6 MR. FERRARO: Let me, let me start. It opened at  
7 36 on the date of the pause. At the point of when it was  
8 communicated around 10:00 p.m. that night, it went down to  
9 .25 cents. Shortly thereafter, it went as low as 15, and it  
10 bounced back up to 28. So it closed the day of the pause at  
11 28, and then the price at the petition was 81.

12 MR. BROWN: And you're -- okay. Got the numbers.  
13 And from your perspective, was there any economic rationale  
14 to support an increase in the value of CEL Token from that  
15 pause date to the petition date, the date of the bankruptcy  
16 filing?

17 MR. FERRARO: I do not see any reason why the  
18 token price would've increased.

19 MR. BROWN: And why is that?

20 MR. FERRARO: It's a utility token on a platform  
21 that ceased -- that paused. It says right in the disclosure  
22 statement that in that circumstance it could be worthless.

23 MR. BROWN: When you say 'disclosure statement'  
24 what are you talking about?

25 MR. FERRARO: These are the general -- sorry, I

1 say 'disclosure statement' -- general terms of use. There is  
2 a risk, a risk disclosure around the risks of CEL Token.

3 MR. BROWN: And what is that disclosure,  
4 Mr. Ferraro?

5 MR. FERRARO: It effectively says that if the  
6 platform were to shut down, that the token could become  
7 worthless. It's a utility token.

8 THE COURT: Which version of the terms of use  
9 there are you referring? Is this Version 8?

10 MR. FERRARO: This is not the earn terms of use,  
11 this is the general.

12 MR. BROWN: Now, Mr. Ferraro, I want to shift  
13 gears to one more topic. In the Debtors' Proposed Plan of  
14 Reorganization, are you familiar with the employee incentive  
15 program?

16 MR. FERRARO: Yes, I am.

17 MR. BROWN: Can you just briefly describe that for  
18 the Court?

19 MR. FERRARO: Yeah, this is incentive program to,  
20 you know, incent the executives to maximize value and get  
21 out of bankruptcy as fast as possible. And it encompasses  
22 different things. Some of it is an effective date target,  
23 some of it is a distribution target. There's KYC targets,  
24 and then there's a bunch of mining operational targets. The  
25 goal of this is effectively to get out of bankruptcy as

1 quick as possible. We are burning \$20 million a month on  
2 professional costs while in bankruptcy. And on the mining  
3 side, it's incredibly important to us that NewCo is a  
4 success. And the mining asset is the crown jewel of NewCo.  
5 So getting rigs plugged in, getting margins up, general risk  
6 management is important for this handoff to maximize value.

7 MR. BROWN: And what is it that you and the other  
8 executives remaining at Celsius are going to be doing  
9 between now and potential emergence from the company, from  
10 bankruptcy if the plan is confirmed?

11 MR. FERRARO: Yeah, it's a Herculean effort. I  
12 mean, I'll give you an example. Myself and my team, we've  
13 been negotiating two distribution agreements with PayPal and  
14 Coinbase, custody agreements. This is, you know, this is --  
15 these are not -- these are normally months and months of  
16 negotiation that we're trying to pack into a short period of  
17 time. You know, the mining business, there's no CEO of  
18 mining. I'm the acting CEO of mining. This takes an  
19 incredible amount of our time. We meet weekly with the UCC  
20 on mining to make sure that his handoff is smooth. So --

21 THE COURT: How many employees remain at Celsius?

22 MR. BROWN: We have currently on payroll just  
23 under 150, but we've noticed almost 50 of them. So we expect  
24 to be right below 100 at the effective date. And which we'll  
25 wind that down after distribution.

1 MR. BROWN: From your perspective, Mr. Ferraro, is  
2 the employee incentive program proposed in the plan, is it  
3 reasonable and appropriate here, sir?

4 MR. FERRARO: Yes. Quite frankly, I think, you  
5 know, some of these targets are probably not going to be  
6 achieved. They were a stretch. This was, you know, weeks and  
7 weeks of negotiation. I think Alvarez and Marsal and M3  
8 negotiated this a bunch and went through the special  
9 Committee for approval. This was done months ago. And we,  
10 we're trying like hell to hit them all for the benefit of  
11 the creditors, but I'm not sure that we will.

12 MR. BROWN: Nothing further at this time, Your  
13 Honor.

14 THE COURT: All right. Cross-examination.

15 MR. BROWN: Your Honor, I think the Committee  
16 might've wanted to do one thing before we get to cross for  
17 housekeeping matters.

18 THE COURT: That's fine. Okay. Mr. Colodny.

19 MR. COLODNY: Yeah, Your Honor, we have a number  
20 of exhibits that are documents that were produced to us by  
21 Celsius, and Mr. Ferraro as the primary company witness. I  
22 was wondering if we could admit those exhibits --

23 THE COURT: If you tell me what they are.

24 MR. COLODNY: I've got them right here. So the  
25 Bates-stamped ones are UCC 3 through 15, 27 through 51, only

1 Number 30 is blank, 54 through 56, 88 through 89, 91 through  
2 121.

3 THE COURT: Hold on, give me that last?

4 MR. COLODNY: 91 through 121.

5 THE COURT: Okay.

6 MR. COLODNY: And 183.

7 THE COURT: Have you provided copies to other  
8 parties?

9 MR. COLODNY: Yes, they're all in our exhibit  
10 list. It was filed in the docket and per Your Honor's  
11 instruction, we had an FTP site which we made open to  
12 everyone in the public. I know there was an issue initially,  
13 but we posted [indiscernible]

14 THE COURT: Okay. Are there any objections to the  
15 Court admitting in evidence Exhibits 3 through 15, 27  
16 through 51, 30 is blank, 54 through 56, 88 through -- and  
17 89, 91 through 121 and 183? Hearing no objection, they're  
18 admitted into evidence.

19 (Exhibits UCC 3 through 15, 27 through 51, 30 is  
20 blank, 54 through 56, 88, 89, 91 through 121, 184 Received  
21 into Evidence)

22 MR. COLODNY: And then we have, uh, three other  
23 exhibits that are official blog posts and Tweets from the  
24 Celsius Network accounts. Those are 177 through 178 and 181.

25 THE COURT: All right. Are there any objections to

1 the Court admitting in evidence Exhibits 177, 178 and 181?  
2 They're admitted into evidence.

3 (Exhibits 177, 178 and 181 Received into Evidence)

4 MR. COLODNY: And then, Your Honor, we have a  
5 number of exhibits which are YouTube videos, AMA's. And we  
6 plan to address how to admit those later today.

7 THE COURT: Okay, all right. Thank you,  
8 Mr. Colodny. Mr. Brown.

9 MR. BROWN: Your Honor, just one housekeeping  
10 matter, I apologize. I needed to move one more exhibit into  
11 evidence that's referenced in Mr. Ferraro's Declaration. I  
12 want to --

13 THE COURT: Which Declaration?

14 MR. BROWN: Yeah, so it's Exhibit 44, the  
15 Confirmation Declaration, Paragraph 53 of Mr. Ferraro's  
16 Declaration. It's on Page 21. References various exhibits to  
17 Docket 393. These are the terms of use that the Debtors  
18 filed on the docket a year ago. They are on the Debtors'  
19 exhibit list at Exhibit 38. Exhibit 38 is one compilation,  
20 all of those exhibits that were filed on the docket at 393.  
21 The Debtors would move Exhibit 38 into evidence.

22 THE COURT: You started by referring to Exhibit  
23 44.

24 MR. BROWN: Yes, I did.

25 THE COURT: So I'm confused.

1 MR. BROWN: Yeah, my apologies. Exhibit 44 is  
2 Mr. Ferraro's Confirmation Declaration.

3 THE COURT: Okay.

4 MR. BROWN: That's into evidence.

5 THE COURT: Yes.

6 MR. BROWN: And Paragraph 53 in Exhibit 44  
7 references all of these terms of use which are on the  
8 Debtors' exhibit list at Exhibit 38.

9 THE COURT: Okay.

10 MR. BROWN: My apologies.

11 THE COURT: Any objections? They're into evidence.

12 (Debtors' Exhibit 44, Paragraph 53 at Exhibit 38  
13 Received into Evidence)

14 MR. BROWN: Thank you, Your Honor.

15 THE COURT: Let me just say, I will try to keep my  
16 own accurate list of what's in evidence. But I think when  
17 the evidence concludes, parties should confer and seek to  
18 provide me with a combined list of all exhibits that have  
19 been admitted in evidence. And if there are any  
20 disagreements about it, we'll sort it out then.

21 MR. BROWN: Absolutely. Happy to do that, Your  
22 Honor.

23 THE COURT: Okay. Thank you very much, Mr. Brown.

24 Ms. Cornell, are you going to [indiscernible]  
25 examine? While you're going up, I've just got to step out

1 and look for some notes on my desk. But nobody get up when I  
2 come back in. So you can get ready to examine as soon as I  
3 get back. All right, Ms. Cornell.

4 MS. CORNELL: My name is Shara Cornell with the  
5 Office of the United States Trustee. I will try my best not  
6 to [indiscernible] lower.

7 THE COURT: All right.

8 MS. CORNELL: I'll do my best --

9 THE COURT: Shara will keep everybody on the  
10 straight and narrow path. Including, including --

11 MS. CORNELL: She will. I'm a little shorter than  
12 everybody else. So I'll try not to repeat what's already  
13 been put into testimony today. But I may have to ask a  
14 couple of questions again. So, Mr. Ferraro, are you familiar  
15 with the plan as filed?

16 MR. FERRARO: Yes.

17 MS. CORNELL: Did you sign the plan as filed?

18 MR. FERRARO: Yes.

19 THE COURT: You have to keep your voice up as  
20 well.

21 MR. FERRARO: I'm sorry. Yes.

22 MS. CORNELL: Are you familiar with the releases  
23 and exculpation provisions found in the plan and the plan  
24 supplement?

25 MR. FERRARO: Yes, I am.



1 MS. CORNELL: And to all of the amended and  
2 supplemental versions of those plans and plan supplements?

3 MR. FERRARO: To the best of my knowledge.

4 MS. CORNELL: And are there a lot of them?

5 MR. FERRARO: Yeah.

6 MS. CORNELL: Are you familiar -- and I think you  
7 are -- with the declaration filed at Docket Number 3581 on  
8 September 27th, 2023? It's Debtors' Exhibit 44 that we've  
9 just been discussing.

10 MR. FERRARO: Yes.

11 MS. CORNELL: Do you have a copy of that in front  
12 of you?

13 MR. FERRARO: I do.

14 MS. CORNELL: And just for the record, I know we  
15 already spoke about this, but did you sign this Declaration  
16 that's found at ECF Docket Number 3581?

17 MR. FERRARO: Yes, I did.

18 MS. CORNELL: Did you prepare this Declaration?

19 MR. FERRARO: It was drafted by the legal  
20 advisors. I reviewed it and we iterated on it until it got  
21 to this point.

22 MS. CORNELL: Okay. What I'm going to do now is  
23 I'm going to ask you questions as they relate to specific  
24 provisions in the Declaration, if that's all right. So if  
25 I'm moving too fast or you need time to re-read, just put

1 your hand up, but also say hold on a minute.

2 MR. FERRARO: Okay.

3 MS. CORNELL: So, I first want to direct you to  
4 Paragraph 8.

5 MR. FERRARO: Yes.

6 MS. CORNELL: So in Paragraph 8, you state that  
7 you had personal involvement in plan negotiations and  
8 drafting process. Can you please confirm if that is  
9 accurate?

10 MR. FERRARO: Yes, that is accurate.

11 MS. CORNELL: In Paragraph 12 you state that you  
12 had close involvement with marketing and sales process and  
13 negotiations. Can you please confirm that this is accurate?

14 MR. FERRARO: yes, that's correct.

15 MS. CORNELL: You also state that you had  
16 firsthand knowledge of the importance of such releases and  
17 exculpation. Can you confirm that -- if that's accurate?

18 MR. FERRARO: Yeah, that's correct.

19 MS. CORNELL: Okay. In Paragraph 13 you state, or  
20 your Declaration states, that in consideration for the  
21 Debtor releases, that the Debtors and their estates will  
22 provide mutual releases for a few -- for certain releasing  
23 parties. Is this true?

24 MR. FERRARO: Yes.

25 MS. CORNELL: I'm not going to go through them

1 all, but I'd like to go through a few of the releasing  
2 parties if possible to discuss what type of consideration  
3 they provide to the Debtors' estates. Are you familiar with  
4 that information?

5 MR. FERRARO: I'll do my best, yes.

6 MS. CORNELL: The first party I'd like to discuss  
7 is the BRIC. And I don't think we discussed them at length  
8 on the record today. So just for the record, would you mind  
9 explaining who the BRIC is and what that means in relation  
10 to the plan?

11 MR. FERRARO: Yeah, the BRIC is our backup plan  
12 sponsor. Their plan is a slightly different structure. It  
13 has a higher kind of initial liquid crypto distribution.  
14 Equity in a mining company. The illiquids stay back and are  
15 not part of the NewCo. So one of the differences in this  
16 plan is the illiquid assets are not converted to liquid  
17 equity, if that makes sense, and the overall recovery rates  
18 are slightly lower than the NewCo plan, which we think is  
19 the value maximizing.

20 MS. CORNELL: Okay. And what about the BRIC as an  
21 entity? Could you explain who makes up the BRIC consortium,  
22 please?

23 MR. FERRARO: Yeah, the BRIC is made up -- and  
24 I'll probably, I'll probably miss a few -- but it's made up  
25 of GXD, which is a company that is involved in the digital

1 assets base in mining. It's made up of VanEck, which is a,  
2 you know, a long-term player and investment space, et  
3 cetera. It was -- we had Gemini as the distribution agent,  
4 if I remember correctly. Yeah, that's kind of the  
5 highlights.

6 MS. CORNELL: Now, to the best of your knowledge,  
7 what consideration has the BRIC consortium provided to the  
8 Debtors and the Debtors' estates to receive releases in this  
9 case?

10 MR. FERRARO: So I look at what the BRIC  
11 contributed as much more than the transactions, the backup  
12 bid. They were there through the auction. They were there  
13 and drove, like we said, preserved an immense amount of  
14 value. I meet with the BRIC weekly, with the special  
15 Committee, to make sure that they're up to speed on any sort  
16 of pivot. They were critical to the success of this plan and  
17 played a unique role as a backup sponsor.

18 MS. CORNELL: Are you familiar with the breakup  
19 fee and expense reimbursement that this Court previously  
20 authorized for the BRIC?

21 MR. FERRARO: Yes.

22 MS. CORNELL: How do you view those breakup fees  
23 and expense reimbursements as they relate to consideration  
24 in this case? You just discussed that they've been helpful  
25 to the Debtors and that they've assisted throughout, and

1 that they're still, I don't want to say on standby, but  
2 they're available. And it's my understanding that the  
3 expense reimbursement and breakup fee were related to what  
4 you just discussed. Could you explain a little bit more  
5 about what additional consideration is to be provided?

6 MR. FERRARO: Yeah. I think the breakup fee, the  
7 expense reimbursement, that's related to the transaction.  
8 BRIC's been here for almost a year through the sales and  
9 marketing process early on, you know, driving, driving value  
10 for the estate. So I think they've provided a lot more than  
11 just the transaction, which was the reason for the breakup  
12 fee and the expense reimbursement.

13 MS. CORNELL: Okay. I'm going to move on now to  
14 PayPal. Are you familiar with PayPal's role in this case?

15 MR. FERRARO: Yeah, I am. We've been working with  
16 them quite a bit in long negotiations, yeah.

17 MS. CORNELL: Could you explain for the record  
18 what PayPal's role is in this case?

19 MR. FERRARO: They'll be a distribution agent. So  
20 they'll provide distribution of BTC and ETH to the creditors  
21 within the United States. And they also have backup fiat  
22 capabilities for those that cannot get either distributed  
23 from Coinbase or from PayPal, we use PayPal fiat.

24 MS. CORNELL: Are you familiar with the timing  
25 that PayPal would be involved in this case?

1 MR. FERRARO: Yeah, it's up to 5 years.

2 MS. CORNELL: Let me rephrase that, I'm sorry.

3 When do you believe that PayPal would begin their role in  
4 this case as a distribution agent?

5 MR. FERRARO: Well, the actual distribution will  
6 not occur until the effective date. But PayPal, I mean,  
7 there is tons of kind of work that's going on right now,  
8 technical work between the IT teams, the technology teams,  
9 the security teams, the operational teams, to make sure that  
10 this handoff is smooth with, you know, really, the security  
11 of the customers' coins at the center of everything we do.

12 MS. CORNELL: So would it be fair to say that your  
13 testimony today is that PayPal, right now, is working on the  
14 contractual relationship with the Debtors prior to  
15 confirmation or the effective date?

16 MR. FERRARO: Contractual and operations.

17 MS. CORNELL: Okay, thank you. To the best of your  
18 knowledge, what consideration, valuable consideration, do  
19 you believe that PayPal is providing to the Debtors' estate  
20 in exchange for its releases?

21 MR. FERRARO: They're returning a lot of  
22 cryptocurrency to creditors who need it.

23 MS. CORNELL: Is PayPal receiving a fee for that  
24 role?

25 MR. FERRARO: No, they're actually paying the

1 estate.

2 MS. CORNELL: I'm going to move on to the plan  
3 administrator. Are you familiar with the plan administrator  
4 in this case?

5 MR. FERRARO: Yes.

6 MS. CORNELL: Or the plan administrator's role?

7 MR. FERRARO: Yes, I am.

8 MS. CORNELL: To the best of your knowledge, what  
9 valuable consideration do you believe the plan administrator  
10 is providing to the estate in exchange for releases?

11 MR. FERRARO: Overseeing the distribution is a --  
12 again, it ties back to the distribution agents. We're  
13 returning \$2 billion of crypto. So that's kind of job one  
14 and two for the plan administrator right out of the gates.

15 MS. CORNELL: Is the plan administrator going to  
16 be compensated for its role?

17 MR. FERRARO: Is the plan administrator -- yes,  
18 yes.

19 MS. CORNELL: Okay. I'm going to move on to  
20 Paragraph 15 of your Declaration.

21 MR. FERRARO: Okay.

22 THE COURT: Let me ask a question. What does the -  
23 - what's the scope of the release that they're getting? What  
24 is it that's released, what's not released?

25 MR. FERRARO: Specifically for PayPal?

1 THE COURT: Well, we went through BRIC, PayPal and  
2 plan administrator. You can go through them one at a time,  
3 but what conduct is not being protected by the -- what  
4 potential conduct is not being protected by the releases  
5 that they're receiving? For example, is there a gross, you  
6 know, misconduct, fraud --

7 MR. FERRARO: Oh, yes. Yeah, yeah.

8 THE COURT: -- what's the scope -- what's the  
9 limitations on the release that each -- that BRIC, PayPal  
10 and the plan administrator would be receiving if the plan's  
11 approved?

12 MR. FERRARO: Okay, perfect. Sorry, I'm not, I'm  
13 not a lawyer and this is my first time, so some of this  
14 stuff is a learning curve for me. There's a carveout for, of  
15 course, negligence, fraud, willful misconduct, yes.

16 THE COURT: Go ahead.

17 MS. CORNELL: Absolutely. So I'm going to turn to  
18 Paragraph 15. And with respect to Paragraph 15 of your  
19 Declaration, I want to turn specifically to the ad hoc  
20 Committees. Are you familiar with the ad hoc Committees in  
21 this case?

22 MR. FERRARO: Yes, I am.

23 MS. CORNELL: Various ad hoc Committees.

24 MR. FERRARO: Yes, I am.

25 MS. CORNELL: Again, I don't want to belabor



1 things or go through all of the different Committees and  
2 what have you. But let's just -- we'll focus on one, just as  
3 an example. We'll talk about Earn Ad Hoc, just because  
4 they're a larger group. To the best of your knowledge, what  
5 consideration has the Earn Ad Hoc group provided in exchange  
6 for releases?

7 MR. FERRARO: I mean, the contributions of the ad  
8 hoc groups to where we are today cannot be understated by  
9 any, any means whatsoever. They support the plan, that was  
10 an important element of the consideration. I mean, they've  
11 been here along the way. We would not be here without the ad  
12 hoc groups, all of them.

13 MS. CORNELL: To the best of your knowledge, have  
14 you or the Debtors agreed to not object to any substantial  
15 contribution claims made by any ad hoc groups as part of  
16 those settlements?

17 MR. FERRARO: I do not know.

18 MS. CORNELL: Okay. Do you know who would know  
19 that information?

20 MR. FERRARO: I would probably have to turn over  
21 to my legal advisors.

22 MS. CORNELL: Okay. Thank you. To the best of your  
23 knowledge, are you providing these releases in exchange for  
24 support of the plan?

25 MR. FERRARO: It's a consideration to support the

1 plan. I don't think it's the only consideration.

2 MS. CORNELL: Okay. In the last sentence of  
3 Paragraph 15, you state that without these releases -- and  
4 I'm paraphrasing, I'm sorry -- without these releases, it  
5 would threaten the ability to make in-kind distributions.  
6 Can you please elaborate?

7 MR. FERRARO: Yeah, ma'am. The simplest way to  
8 think about it is, if we didn't kind of come to settlements  
9 with the various groups, we'd be litigating a lot of these  
10 items. We would still be litigating these items. And that  
11 would obviously slow down, not only slow down the return of  
12 liquid crypto, but it would decrease the amount that we have  
13 available. We continue to burn 20 million a month.

14 MS. CORNELL: I'm going to go back to Paragraph  
15 17, if you don't mind. And again, I apologize if I'm  
16 repeating earlier things, but they're -- try to go in the  
17 order of the Declaration to make it as easy as possible. In  
18 Paragraph 17, the Declaration states that you know full well  
19 the contributions that the Debtors will need the release  
20 parties to continue to make. Do you think you could help us  
21 unpack that sentence? Again, it says that you know full well  
22 the contributions that the Debtors will need the release  
23 parties to continue to make.

24 MR. FERRARO: Think of the employees getting this  
25 distribution done. Think -- we talked about PayPal,

1 Coinbase. These are Herculean efforts to do this.

2 MS. CORNELL: What about the ad hoc groups, what  
3 kind of contributions will they continue to make?

4 MR. FERRARO: I mean, the ad hoc groups continue  
5 to support the plan. The ad hoc groups, you know, we got to  
6 the settlements. And, you know, there's Board observers, et  
7 cetera. So --

8 MS. CORNELL: Okay. I'm going to move on to  
9 Paragraph 20. Paragraph 20 states that third-party releases  
10 are wholly consensual. Can you explain for the record what  
11 that means to you?

12 MR. FERRARO: It means that in the ballots, you  
13 can opt out of the releases.

14 MS. CORNELL: So --

15 MR. FERRARO: So people had a vote.

16 MS. CORNELL: So it's your opinion, based on the  
17 balloting and the receipt of those ballots, that the third-  
18 party releases were wholly consensual.

19 MR. FERRARO: Yes.

20 MS. CORNELL: I'm going to move on to Paragraph  
21 21, please. Are you familiar with the voting process and  
22 tabulation?

23 MR. FERRARO: Somewhat. Not, not intimately, but  
24 somewhat.

25 MS. CORNELL: And if you don't know the answer to

1 my question, that's acceptable. But do you know the number  
2 of opt-out forms that were received by the Debtors?

3 MR. FERRARO: I do not.

4 MS. CORNELL: Okay. Who would be the best person  
5 to ask that information?

6 MR. FERRARO: I would probably ask the legal  
7 advisors, who are very close to this.

8 MS. CORNELL: I'm going to go to Paragraph 22,  
9 please. And again, in Paragraph 22, you discuss the release  
10 parties' substantial contributions. I'd like to go through  
11 some of the post-effective date entities here. Are you  
12 familiar with what I mean when I say post-effective date  
13 entities?

14 MR. FERRARO: I think so, yes.

15 MS. CORNELL: Okay. I won't -- again, I won't go  
16 through them all, but just, just a few. The first one I'd  
17 like to go through is the plan administrator. I know we  
18 spoke about that role a little bit earlier. But would you  
19 agree that the plan administrator is not currently in  
20 existence?

21 MR. FERRARO: Yeah.

22 MS. CORNELL: To the best of your knowledge, when  
23 will the plan administrator role come into existence?

24 MR. FERRARO: At the effective date.

25 MS. CORNELL: The effective date. Okay. What about

1 NewCo, is NewCo currently in existence?

2 MR. FERRARO: There might be entities related to  
3 NewCo that have been opened, but the assets have not vested.  
4 So I wouldn't say that it exists at the moment.

5 MS. CORNELL: So would it be your testimony that  
6 NewCo will not exist until post-confirmation, post-effective  
7 date?

8 MR. FERRARO: In a meaningful way, yes.

9 MS. CORNELL: Okay. And without going through all  
10 the parties, would it be your understanding that there are  
11 some parties listed in the release and exculpation  
12 provisions that will not be in existence? And I know that's  
13 a weird turn of phrase, but be in existence until after the  
14 plan is confirmed and the plan goes effective?

15 MR. FERRARO: Yeah, I think we went through the  
16 two good examples of that.

17 THE COURT: I'm sorry, I didn't hear the last  
18 part.

19 MR. FERRARO: I'm sorry, I think we went through  
20 two good examples of that, yeah.

21 MS. CORNELL: Thank you. So now I'm going to move  
22 onto some of the exculpation provisions in the plan and in  
23 your Declaration. The first one is Paragraph 26. You state  
24 your belief that these provisions are appropriate. Can you  
25 please confirm that for the record, that you believe that?

1 MR. FERRARO: Yeah, I, I do, and I can confirm  
2 that this is a situation in which this industry does not  
3 have a clear regulatory kind of understanding. And, you  
4 know, distributing crypto is, is -- doesn't come without  
5 risk.

6 MS. CORNELL: Sure. In Paragraph 27, you state  
7 that these exculpation provisions are critical to ensure  
8 that funds can be returned to creditors. Is that your  
9 belief?

10 MR. FERRARO: Yeah, absolutely.

11 MS. CORNELL: Can you explain just a little bit  
12 for the record how these exculpation provisions will impact  
13 distributions in this case, and the return of funds to  
14 creditors?

15 MR. FERRARO: Well I think it's a key component of  
16 the distribution partners getting comfortable with the  
17 situation.

18 MS. CORNELL: Okay.

19 THE COURT: Is there a list that specifically  
20 names who will receive releases or exculpation?

21 MR. FERRARO: Exculpations, releases are --  
22 there's a black list of people who are excluded.

23 THE COURT: I understand -- that part I  
24 understand. But is there a list identifying the parties who  
25 will receive releases or exculpation?

1 MR. FERRARO: To my knowledge, we have not gone  
2 back and included every single person that was -- and  
3 created a list, that was ever an employee, that's not on the  
4 excluded list and things like that. So I'm not sure that  
5 there's a master list.

6 THE COURT: How is a court supposed to know who is  
7 receiving a release or exculpation? I can look at a list of  
8 excluded parties, but you've acknowledged there's no list of  
9 who's receiving releases or exculpations. How -- whether  
10 it's this Court or a non-bankruptcy court or some other  
11 court, how -- if issue arises, if someone sues someone who  
12 is involved, how is a court supposed to know whether they  
13 received a release or exculpation?

14 MR. FERRARO: I'll do my best. Again, not a  
15 lawyer, first time. I think it's pretty clear who's  
16 excluded, and I --

17 THE COURT: I think I understand who's excluded.

18 MR. FERRARO: Okay.

19 MS. CORNELL: Mm-hmm.

20 THE COURT: My question is, who is included.

21 MR. FERRARO: I think the way it's written, it's  
22 everybody who's not excluded.

23 THE COURT: Is that everybody in the universe?

24 THE COURT: Well, it's, it's labeled -- sorry,  
25 it's qualified employee, you know, Debtors, employees,

1 special Committee, et cetera.

2 MS. CORNELL: And I think the release parties also  
3 are included.

4 MR. FERRARO: Yeah, it's the [indiscernible]  
5 release parties, I apologize for --

6 THE COURT: Right. That, just for the benefit of  
7 the Committee and the Debtors, that is something that's  
8 bothering me, is I think I know who the excluded parties  
9 are. They're identified. It's that who's receiving a release  
10 or exculpation is not. I understand Ms. Cornell has made the  
11 point that the plan administrator is not selected yet, but  
12 that will be easily identified. Go ahead.

13 MS. CORNELL: Thank you, Your Honor. So we just  
14 spoke about it's your belief in the Declaration that these  
15 exculpation provisions are critical to insuring funds are  
16 distributed to creditors. Are you aware of the Voyager  
17 bankruptcy case and the Voyager bankruptcy plan? Generally  
18 speaking.

19 MR. FERRARO: Generally. Not in any details. I've  
20 been focused on this one.

21 MS. CORNELL: Absolutely. So, as of right now, the  
22 plan, as I understand, in Voyager, was confirmed. But the  
23 exculpation provision was held in abeyance. What is your  
24 opinion about how those exculpation provisions in this case  
25 are required for distribution? Or are those some -- are



1 those something that can be seen as a separate issue?

2 THE COURT: I'm going to object, stating the  
3 objection.

4 MS. CORNELL: Sure.

5 THE COURT: I mean, if you've got -- I don't think  
6 it's proper to ask him about what's in the Voyager --

7 MS. CORNELL: Sorry.

8 THE COURT: -- plan or exculpations, or in Judge  
9 Wiles' opinions when he addressed the issues.

10 MS. CORNELL: Right.

11 THE COURT: He obviously was very troubled.

12 MS. CORNELL: Yes.

13 THE COURT: By some of the objections to  
14 exculpation and releases. So I'm ruling that out.

15 MS. CORNELL: Understood, Your Honor. So moving on  
16 to Paragraph 28. And I'd like to specifically discuss the  
17 BRIC as they relate to the exculpation provisions. Are you  
18 aware that the BRIC were given an option to be retained by  
19 the estate in these cases, but declined?

20 MR. FERRARO: Referencing the consulting  
21 arrangement?

22 MS. CORNELL: Yes. Exactly. I'm sorry, yes.

23 MR. FERRARO: Yes.

24 MS. CORNELL: With respect to their consulting,  
25 that they had originally desired.

1 MR. FERRARO: Yeah, the 500,000 a month, yes.

2 MS. CORNELL: Mm-hmm.

3 MR. FERRARO: I am.

4 MS. CORNELL: Why should the BRIC receive the same  
5 type of benefits that retained professionals receive, when  
6 they made a choice not to be retained by the estate?

7 THE COURT: I don't think that's a fair question.  
8 When the issue about their retention arose, it was a  
9 question of whether provisions of the code regarding  
10 retention arose. We had a whole colloquy about it. I  
11 supported the position of the US Trustee that they could not  
12 be retained at that point, and it didn't get pressed. So I  
13 think the question is an unfair question because it really  
14 excludes what the whole background and colloquy about  
15 whether or not they're retained. Here they are, the backup  
16 bidder, and the issue of whether they're -- whether they  
17 should also be provided with releases or exculpations is  
18 very much an issue.

19 MS. CORNELL: Mm-hmm.

20 THE COURT: But I don't think it's fair to ask  
21 about what your -- the basis for your objection or my  
22 agreement with it.

23 MS. CORNELL: Mm-hmm. Okay. That's fair. Moving on  
24 to Paragraph 28, and this deals with PayPal and Coinbase.  
25 Would you agree that both PayPal and Coinbase have and will

1 be included in very discreet acts with respect to this case?

2 MR. FERRARO: The main purpose will be to return  
3 crypto and value to customers, yes.

4 MS. CORNELL: For the record, could you explain a  
5 little bit about each Coinbase and PayPal's specific acts  
6 within this bankruptcy case, and what their -- what the  
7 Debtors' expectations are for them?

8 MR. FERRARO: Yeah. We'll start with PayPal. Think  
9 of PayPal predominantly as the distribution agent. They'll  
10 return BTC and ETH to US customers. We also will use Paxos  
11 as a custodian. It's not PayPal specifically, but Paxos as a  
12 custodian for the amounts that we're going to distribute  
13 vis-à-vis PayPal.

14 MS. CORNELL: Mm-hmm.

15 MR. FERRARO: And then Coinbase is doing the  
16 distribution and they're also the custodian for the assets  
17 that are related to international distribution. So it is  
18 narrow distribution agent and custodian.

19 MS. CORNELL: So with that in mind, with these  
20 narrow roles in mind, why, in your belief, should they  
21 receive the same type of broad exculpations as, say,  
22 Kirkland & Ellis?

23 MR. FERRARO: I mean, simply stated, there's no  
24 knowledge of any issues with either of these. They're a key  
25 partner in the distribution, and we feel that, you know,

1 this is something that helps get us to that point.

2 MS. CORNELL: But you do agree that their role is  
3 limited to distribution and not the entirety of the  
4 bankruptcy case.

5 MR. FERRARO: Yeah, distribution and for Coinbase  
6 as well, custody, yes.

7 MS. CORNELL: Okay. Is it your understanding that  
8 no post-effective date entity will be exculpated?

9 MR. FERRARO: Yeah, I mean, I think the  
10 exculpations are all for -- yeah.

11 MS. CORNELL: And I bring that up because there  
12 was a temporal scope added to the exculpation provision. Are  
13 you familiar with that?

14 MR. FERRARO: No, I don't -- I'm not sure that I -  
15 - I don't want to get into that [indiscernible]

16 MS. CORNELL: That's okay.

17 THE COURT: That's something that was negotiated  
18 between your office and the Debtors and the Committee, and  
19 it was added to narrow the scope of release or exculpation.

20 MS. CORNELL: During a specific time period pre-  
21 effective date. Just as -- by way of background.

22 THE COURT: Yeah. I'm not sure, what's the -- why  
23 is that a proper question here?

24 MS. CORNELL: Well, I was --

25 THE COURT: They negotiated -- you raised an

1 objection to --

2 MS. CORNELL: I just wanted to know if he had --  
3 if he knew -- I just wanted to know if he was familiar with  
4 it.

5 THE COURT: Let me -- you raised an objection to  
6 scope of releases and exculpation. You still have some  
7 objections.

8 MS. CORNELL: Mm-hmm.

9 THE COURT: But you negotiated modifications to  
10 the language to have a temporal limitation. But that was  
11 between the lawyers. I mean --

12 MS. CORNELL: I just wanted to know if he was  
13 familiar with it. The limitation that was provided.

14 THE COURT: Next question.

15 MS. CORNELL: Okay.

16 MR. FERRARO: I know that we went -- I'm sorry.

17 THE COURT: Go ahead.

18 MS. CORNELL: With respect to the plan  
19 administrator, are you familiar with the Plan Administration  
20 Agreement?

21 MR. FERRARO: I've been through the agreement,  
22 I've read through it a few times, yes.

23 MS. CORNELL: I don't believe it's listed on one  
24 of the Debtors' exhibits. So if Your Honor would allow us to  
25 approach to provide an excerpt from the Plan Administration

1 Agreement. It was in a plan supplement.

2 THE COURT: If there's no objection, go ahead.

3 We'll see if we have any objections.

4 MS. CORNELL: [indiscernible] do you have a copy?

5 MR. COLODNY: Your Honor, can she admit the whole  
6 exhibit, just so we have everything?

7 THE COURT: Ask your questions, agree with the  
8 Debtors and the Committee, you can introduce the exhibit. It  
9 doesn't have to be right now. You can go ahead with your  
10 question.

11 MS. CORNELL: Yes, that's fine, I, yeah.

12 THE COURT: Go ahead.

13 MS. CORNELL: Absolutely fine. The Plan  
14 Administrator Agreement provides for different standards for  
15 exculpation than the plan itself and the confirmation order.  
16 Are you familiar with those distinctions?

17 MR. FERRARO: I believe so.

18 MS. CORNELL: Would you mind explaining for the  
19 record why there's a difference in the exculpation provided  
20 in the plan and in the Plan Administrator Agreement?

21 MR. FERRARO: Yeah, I think the Plan Administrator  
22 Agreement, the exculpation is more like a -- and I'm sort of  
23 venturing outside my comfort zone here. But it's sort of  
24 more of a contract type of situation, not a bankruptcy  
25 situation. This is like a limitation of liability clause, to

1 my understanding. So effectively, you know, it shields the  
2 plan administrator unless it's negligent, willful  
3 misconduct, bad acts, et cetera. That's my understanding.

4 MS. CORNELL: I think that's all that I have for  
5 now, Your Honor. Thank you.

6 THE COURT: Thank you very much. Anybody else wish  
7 to cross-examine?

8 MR. KIRSANOV: I do, Your Honor. Dmitry Kirsanov.

9 THE COURT: All right. Go ahead.

10 MR. KIRSANOV: Good morning, Mr. Ferraro. You  
11 mentioned your gross maximized value to [indiscernible] so  
12 let's talk about the CEL Token matter. Were you aware that  
13 about 750,000 of my CEL Tokens in custody were unable to be  
14 moved months ahead of the freeze of bankruptcy?

15 MR. FERRARO: I'm not aware of that specific  
16 situation.

17 MR. KIRSANOV: Did Celsius have enough CEL Token  
18 to move my funds?

19 MR. FERRARO: Celsius has enough CEL Tokens to  
20 satisfy any obligations.

21 MR. KIRSANOV: Did Celsius have enough CEL Tokens  
22 to move my funds when I had requested them to be moved?

23 MR. FERRARO: I can't speak to your specific  
24 situation, but we had ample amount of CEL Token.

25 MR. KIRSANOV: Are you familiar with the Blunsine

1 [ph] Declaration?

2 MR. FERRARO: Generally. It's been a while ago,  
3 but yes.

4 MR. KIRSANOV: Were you aware that the custody and  
5 withhold liabilities where CEL exceeded the assets available  
6 on Fireblocks ahead of the freeze and filing date?

7 MR. FERRARO: Not, not sure I'm following or  
8 knowledgeable about those details.

9 THE COURT: You can ask questions, but you can't  
10 testify as to facts, whether they're facts or not. But I'll  
11 permit you to ask the witness questions. But you're making  
12 statements of fact that are not in the record.

13 MR. KIRSANOV: All right, thank you, Your Honor.  
14 Did CEL Token have a market value ahead of the asset pause?

15 MR. FERRARO: Yeah, I mean, ahead of the pause it  
16 was traded. It was traded on exchanges, traded on Celsius  
17 OTC. So there was a market pre-pause, yes.

18 MR. KIRSANOV: Did the CEL Token have a market  
19 value ahead of the bankruptcy filing day?

20 MR. FERRARO: Yeah, I think we just talked about  
21 that, that there was value at the pause, there was value  
22 thinly traded post the pause. Most of the coins were -- it  
23 had --

24 THE COURT: We had a price, but what is -- value  
25 may be different than the price.



1 MR. FERRARO: Value might be different from price.  
2 There's a price that we could see on the screen.

3 MR. KIRSANOV: So the CEL Token did have a market  
4 value after bankruptcy as well.

5 MR. COLODNY: Objection, Your Honor. He's  
6 [indiscernible] referring to price.

7 THE COURT: Sustained. You can ask whether it had  
8 a price, but not a value.

9 MR. KIRSANOV: Did the CEL Token have a price  
10 after bankruptcy?

11 MR. FERRARO: Yes, you could see it on, you could  
12 see the price on the screen, yes. It had a price.

13 MR. KIRSANOV: Could an individual acquire CEL or  
14 transact with CEL Token even today?

15 MR. FERRARO: Yes, there's about 5 percent of the  
16 circulating supply that is tradable at this moment.

17 MR. KIRSANOV: Did the price of CEL Token exceed  
18 .81 cents after bankruptcy?

19 MR. FERRARO: It might have, for a moment in time.  
20 I think it precipitously declined to this point, largely.

21 MR. KIRSANOV: Did it exceed one dollar after  
22 bankruptcy?

23 MR. FERRARO: I don't know the specifics, sir. It  
24 might have.

25 MR. KIRSANOV: Okay. Were you aware that the

1 majority of CEL Token holders in the custody class voted to  
2 reject the CEL Token settlement? [indiscernible]

3 MR. FERRARO: No, I was not aware.

4 MR. KIRSANOV: Accepting the custody settlement  
5 transfers the ownership of tokens to the creditor. Is that  
6 correct?

7 MR. COLODNY: Objection, Your Honor. Calls for a  
8 legal conclusion.

9 THE COURT: Sustained.

10 MR. FERRARO: Can you ask again?

11 THE COURT: No, objection sustained. Ask the next  
12 question.

13 MR. FERRARO: Okay.

14 MR. KIRSANOV: If a custody holder has not  
15 accepted the custody settlement and rejected the plan, can  
16 Debtors retain control of the CEL Token settlement, is that  
17 correct?

18 MR. COLODNY: Objection, Your Honor. Calls for a  
19 legal conclusion.

20 THE COURT: Sustained.

21 MR. KIRSANOV: Does the CEL Token settlement apply  
22 to the CEL Tokens held in the custody class?

23 MR. COLODNY: Objection, Your Honor.

24 THE COURT: Sustained.

25 MR. KIRSANOV: CEL Tokens were not able to be

1 distributed immediately upon the initial custody settlement  
2 on disbursement day. Why is this?

3 MR. FERRARO: CEL Tokens were not able to be  
4 distributed -- we distributed CEL Tokens to custody holders.

5 MR. KIRSANOV: But they were not able to be  
6 distributed immediately on disbursement day. Why was this?

7 MR. FERRARO: I'm not following. We were able to  
8 distribute CEL Token back to custody customers.

9 MR. KIRSANOV: You were, but not in the platform  
10 immediately open. Why was it unavailable to be distributed  
11 for up to two weeks?

12 MR. COLODNY: Objection, Your Honor. Asked and  
13 answered.

14 THE COURT: Sustained.

15 MR. KIRSANOV: Is there a reason why CEL Token may  
16 have not been able to be distributed?

17 MR. COLODNY: Objection.

18 THE COURT: Overruled. Do you know the answer to  
19 that?

20 MR. FERRARO: We have -- I mean, there -- for  
21 custody specifically, sir?

22 MR. KIRSANOV: Yes, for the custody settlement.

23 MR. FERRARO: Yeah, we can distribute CEL Token. I  
24 think there's areas that we are still going through the  
25 details on whether or not we can distribute coin back given

1 MTL laws, et cetera. But the plan is to --

2 THE COURT: It's a jurisdictional issue.

3 MR. FERRARO: Jurisdictional issue, the plan is to  
4 distribute CEL back to custody holders.

5 MR. KIRSANOV: When did Celsius obtain the CEL  
6 Tokens to pay out the initial custody claims?

7 MR. FERRARO: We had them on our balance sheet.

8 MR. KIRSANOV: Where will Celsius obtain the CEL  
9 to distribute to -- the rest of the CEL Tokens to the  
10 custody groups?

11 MR. FERRARO: We have ample supply on our balance  
12 sheet.

13 MR. KIRSANOV: Why was the .21 cent CEL Token  
14 valuation decided for the custody class on the plan vote  
15 when the custody class, in a monetary majority, rejected the  
16 CEL Token plan?

17 MR. COLODNY: Objection, Your Honor.

18 THE COURT: Sustained.

19 MR. KIRSANOV: How can Celsius distribute custody  
20 assets aside from Bitcoin and Ethereum, to non-settling  
21 custody class residents of Hawaii that voted no to the plan?

22 MR. BROWN: Objection, Your Honor.

23 THE COURT: Sustained.

24 MR. KIRSANOV: Can Celsius distribute custody  
25 assets aside from Bitcoin and Ethereum, to Hawaii residents?

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MR. BROWN: Objection calls for --

THE COURT: Sustained.

MR. BROWN: Calls for legal conclusion.

MR. KIRSANOV: Can Celsius -- what value are CEL  
Token holders provided to the non-settling custody class, to  
residents of Hawaii?

MR. FERRARO: We plan to distribute CEL in kind to  
the custody class. We are hoping that we can achieve that in  
Hawaii. The system will be open for 90 -- the plan is for  
the system to open, be open for 90 days post the effective  
date, so that customers can get their in-kind distribution.  
After 90 days, we have to shut the system down. We have to  
reduce the employees. You know, so the distribution is  
timebound. If folks come and get their in-kind distribution  
within those 90 days, that, you know, they will be able to  
leave the platform. Otherwise, that would be converted to  
BTC and ETH and distributed by PayPal.

MR. KIRSANOV: The CEL Token valuation and  
bankruptcy valuations is .81 cents. Is that true?

MR. BROWN: Objection.

THE COURT: Sustained.

MR. KIRSANOV: What is the CEL Token valuation and  
bankruptcy valuation?

MR. BROWN: Objection.

1 THE COURT: Sustained.

2 MR. KIRSANOV: The valuation that was provided to  
3 CEL Token claims and the custody class at deactivation date  
4 is .25 cents. Is that true?

5 MR. FERRARO: That's the proposed settlement for  
6 the CEL Token, yes.

7 MR. KIRSANOV: Chapter 7 liquidation values for  
8 the custody class is 72 1/2 percent and 100 percent for pure  
9 custody. Is this true?

10 MR. FERRARO: Can you say that again? I'm sorry.

11 MR. KIRSANOV: Certainly. In a Chapter 7  
12 liquidation matter, the liquidation values for the custody  
13 class are 72 1/2 percent, and 100 percent for pure custody.  
14 Is that true?

15 MR. FERRARO: Yeah, but the custody coins will be  
16 returned in kind. This is only --

17 MR. KIRSANOV: If, if the --

18 THE COURT: No, don't interrupt. Go ahead.

19 MR. KIRSANOV: All right.

20 MR. FERRARO: This is only the .25 cents as it  
21 pertains to custody, is only in case they don't come within  
22 the 90 days or we can't distribute and we have to convert it  
23 to BTC or ETH, in which it's proposed to do at the  
24 settlement price, is my understanding.

25 MR. KIRSANOV: If someone rejects the custody

1 agreement, what is the procedure with their custody  
2 holdings?

3 MR. FERRARO: If somebody rejects -- I, I didn't  
4 pick up the end. If somebody rejects -- can you say -- ask  
5 again?

6 MR. KIRSANOV: Yes, certainly. If someone -- if a  
7 class holder in the custody section rejects the plan, what  
8 is the procedures of their assets?

9 MR. BROWN: Objection.

10 THE COURT: Sustained.

11 MR. KIRSANOV: If somebody in the custody class  
12 rejects the plan, what happens?

13 MR. BROWN: Objection.

14 MR. COLODNY: Objection.

15 THE COURT: Sustained.

16 MR. KIRSANOV: Why does a Chapter 11 plan give  
17 less to a CEL custody creditor than a Chapter 7 plan?

18 MR. BROWN: Objection.

19 MR. COLODNY: Objection.

20 THE COURT: Sustained.

21 MR. KIRSANOV: Is it in the best interest of the  
22 CEL custody holder that does not accept the plan to prefer  
23 Chapter 7 versus Chapter 11?

24 MR. BROWN: Objection.

25 MR. COLODNY: Objection.

1 THE COURT: Sustained.

2 MR. KIRSANOV: Do you think it is fair that a  
3 creditor who could not move his custody funds ahead of the  
4 freeze and bankruptcy filing date be subject to the .25 cent  
5 deactivation valuation?

6 MR. FERRARO: I think we went through that, sir.  
7 You have 90 days to come to the platform and take the coins  
8 off in kind.

9 MR. KIRSANOV: After 90 days, it goes to the  
10 deactivation date, is that correct?

11 MR. FERRARO: After 90 days it would be converted  
12 to BTC and ETH at the settlement price, is my understanding,  
13 yes.

14 MR. KIRSANOV: And the settlement price is less  
15 than the bankruptcy date price, is that correct?

16 MR. FERRARO: I think the contested point is that  
17 price and whether that was a real front value, given the  
18 manipulation and the lack of trading volume. 95 percent is  
19 locked on the platform.

20 MR. KIRSANOV: But the price is less, ultimately,  
21 is that correct?

22 MR. FERRARO: I, I don't know, I mean --

23 THE COURT: .25 cents is less than .81 cents. Yes.  
24 Ask your next question.

25 MR. KIRSANOV: That's it for now, Your Honor.



1 Thank you.

2 THE COURT: Thank you very much. Any other  
3 questions? Any other cross-examination?

4 MR. DAVIS: Yeah, I have a cross-examination, Your  
5 Honor.

6 THE COURT: All right, Mr. Davis.

7 MR. DAVIS: Sure, thank you. Mr. Ferraro, good  
8 morning. My name's Otis Davis. I'm a Pro Se Creditor.

9 MR. FERRARO: Good morning. Sorry, I'm taking a  
10 drink of water. Good morning, Mr. Davis.

11 MR. DAVIS: Now I'd like to turn to Docket 3532,  
12 my Motion, page 6 of 29. Mr. Ferraro, are you aware of the  
13 conversation that you had with Jason Perman, which were  
14 included with my Motion filed with the Court at Docket 3532,  
15 wherein you speak about creating a presentation  
16 [indiscernible] financial information of Celsius?

17 MR. BROWN: Your Honor, I'm going to object. I  
18 don't have exhibit lists, I don't --

19 THE COURT: Sustained. I ordered that any  
20 documents that any party wished to use in cross-examination  
21 had to be filed on the docket by 5:00 p.m. yesterday. My  
22 desk is --

23 MR. DAVIS: Your Honor, we were --

24 THE COURT: Just a second. Don't interrupt. My  
25 desk is piled with documents. There are thousands of

1 exhibits, there are thousands of entries on the docket. You  
2 can ask questions, but unless you provided documents you  
3 wish to use in cross-examination by last night, you can't  
4 use anything. Go ahead.

5 MR. DAVIS: Mr. Ferraro, are you aware about  
6 [indiscernible]

7 THE COURT: I'm sorry, you cut out.

8 MR. DAVIS: Mr. Ferraro, are --

9 THE COURT: Could you ask your question again?

10 MR. DAVIS: Sure. Mr. Ferraro, are you aware at  
11 the moment of the pause on June 12th, 2022, the amount of  
12 open short positions against CEL Token on FTX exploded from  
13 8 million short positions to over 20 million short  
14 positions?

15 MR. FERRARO: I've, I've read about it, I've been  
16 in conversations about it. I haven't studied it uniquely.  
17 I'm aware of the general discussion of this topic.

18 MR. DAVIS: Are you aware there were only about 5  
19 million CEL Tokens on the FTX platform at the time of the  
20 pause, and that 15 million of those 20 million short  
21 positions were illegal [indiscernible] shorts?

22 MR. BROWN: Objection, Your Honor.

23 THE COURT: Sustained.

24 MR. DAVIS: Are you also aware that from the pause  
25 to the petition date, over 17 million --

1 THE COURT: I sustained the objection to the last  
2 question, so you can't ask whether he's also aware. If you  
3 want to ask a question, ask a question.

4 MR. DAVIS: One second, Your Honor. Mr. Ferraro,  
5 was the price of CEL Token at any time higher than .81 cents  
6 from the pause, the petition date?

7 MR. FERRARO: My understanding is it went above  
8 .81 cents at, at periods of time in that time period.

9 MR. DAVIS: Is it fair to state it went to \$1.60  
10 as reflected in Mr. [Indiscernible] report?

11 MR. FERRARO: I don't have all the numbers in  
12 front of me, but doesn't sound unreasonable that it could  
13 hit that for a point in time, yes.

14 MR. DAVIS: Mr. Ferraro, is it your testimony that  
15 you are aware of no other factors that could have moved the  
16 price of CEL Token from the .28 cent closing price on the  
17 date of the pause, to the \$1.60 price on June 22nd, to the  
18 .81 cent price on the petition date?

19 MR. BROWN: Objection.

20 THE COURT: Sustained.

21 MR. DAVIS: Do you have any idea or explanation  
22 why the price of CEL Token moved up to \$1.60 on June 22nd,  
23 2022?

24 MR. BROWN: Objection.

25 THE COURT: Do you know, Mr. Ferraro, whether it

1 moved to that price or not?

2 MR. FERRARO: I don't know the exact price, no.

3 THE COURT: Sustained.

4 MR. DAVIS: Can you describe the extent and nature  
5 of the contract that you or anyone were in Celsius that you  
6 are aware of had with FTX or Alameda Research 3 months  
7 prior to the pause?

8 MR. FERRARO: I'm only aware of interactions with  
9 FTX and Alameda Research that went through our bankers. At  
10 the time that was Citibank.

11 MR. DAVIS: Mr. Ferraro, do you know about how  
12 many CEL Tokens Celsius purchased from the market between  
13 the pause and the petition date?

14 MR. FERRARO: Zero.

15 MR. DAVIS: Thank you. Mr. Ferraro, would you be  
16 surprised to know that Celsius did not -- sorry.  
17 Mr. Ferraro, do you know how many CEL Tokens Celsius was a  
18 net seller of for the combined months of June 2022 and July  
19 2022, which included the entirety of the pause?

20 MR. FERRARO: I do not know the amount that you're  
21 referencing, no.

22 MR. DAVIS: One second, Your Honor. Thank you,  
23 Judge. I'm finished.

24 THE COURT: Thank you. Anyone else wish to cross-  
25 examine?

1 MR. IOVINE: Yes. Jason Iovine, Pro Se Creditor.

2 THE COURT: Go ahead, Mr. IOVINE.

3 MR. IOVINE: I -- please excuse me, I'm not a  
4 lawyer, so bear with me. Mr. Ferraro, can you tell us who  
5 has control over the CEL Token contract, the administrator  
6 rights of it?

7 MR. FERRARO: I, I'm not in technology so I'm not  
8 a native crypto person. I believe the smart contract governs  
9 it, but I don't have those details.

10 MR. IOVINE: So you don't know if Celsius has the  
11 ability to freeze the CEL Token contract where the CEL Token  
12 cannot interact with the contract?

13 THE COURT: I don't understand your question.

14 MR. IOVINE: How can I explain it. The contracts  
15 have -- some contracts have the ability to freeze so they  
16 cannot interact with the contract. It's kind of like  
17 removing a stock from trading.

18 MR. BROWN: Your Honor, can he ask the question  
19 again?

20 THE COURT: Ask the question and we'll see what  
21 we, what -- go ahead.

22 MR. IOVINE: Okay, go ahead. Sorry. You said you  
23 don't know if Celsius, or who has control over the contract.  
24 So let me ask, as in, like, any equity that's traded when a  
25 company goes into bankruptcy, it should -- it gets delisted

1 or a Q put on the end of it. Why wasn't that done with CEL  
2 Token?

3 MR. FERRARO: I mean, CEL Token is traded on  
4 exchanges. There was a supply outside of what was on the  
5 platform that was locked.

6 MR. IOVINE: Okay. Now, with what was being said  
7 is that CEL Token is dependent on Celsius. Was there any  
8 other financial institutions that used CEL Token?

9 MR. FERRARO: I'm not sure I understand the  
10 question.

11 MR. IOVINE: As I know as BP Finance, Chedal [ph],  
12 DeFi protocols that used it for lending and borrowing, yield  
13 farming. Is that correct?

14 MR. FERRARO: I, I --

15 MR. IOVINE: Good swap also.

16 MR. FERRARO: I'm -- CEL Token was widely held, so  
17 it was held by many people in different entities. And there  
18 was some use of CEL in yield farming on exchanges, et  
19 cetera. But I don't know the depths of it, and I don't think  
20 it was that deep of a market, to my understanding.

21 MR. IOVINE: Okay, so it had been solely  
22 independent of Celsius.

23 MR. FERRARO: Um --

24 THE COURT: I don't understand your question.

25 MR. IOVINE: It goes to --

1 THE COURT: Just ask, just ask questions.

2 MR. IOVINE: CEL Token was --

3 THE COURT: Just ask questions.

4 MR. IOVINE: Okay.

5 MR. BROWN: Your Honor, I just want to note for  
6 the record, our notes indicate that Mr. IOVINE actually  
7 voted to accept the plan.

8 THE COURT: I'm going to let -- Mr. Brown, sit  
9 down.

10 MR. BROWN: I understand.

11 THE COURT: Mr. Brown. Mr. IOVINE, go ahead.

12 MR. IOVINE: Thank you, sir. Is it not reasonable  
13 to think that CEL Token could've had a future with Celsius  
14 during the pause time, because Celsius was lacking  
15 communications and they were still paying out rewards to the  
16 accounts?

17 MR. BROWN: Objection, Your Honor.

18 THE COURT: Sustained.

19 MR. IOVINE: Okay, Your Honor, that's about all.

20 THE COURT: All right. Anybody else wish to cross-  
21 examine?

22 MR. PHILLIPS: Yes, Your Honor. Yes.

23 THE COURT: All right, it was Mr. Phillips.

24 MR. PHILLIPS: Thank you, Your Honor.

25 MR. IOVINE: I don't care if I accept it.

1 THE COURT: Excuse me. Mr. Phillips, you wish to  
2 question?

3 MR. PHILLIPS: Yes, I do.

4 THE COURT: Go ahead.

5 MR. PHILLIPS: Thank you. Mr. Ferraro, I'm going  
6 to follow, essentially, the order of your Declaration. And  
7 so I'd like to turn to Paragraph Number 9.

8 THE COURT: Which of the Declarations? Because  
9 there are several that have been admitted into evidence.

10 MR. PHILLIPS: 3581. Mr. Ferraro's got it up  
11 there.

12 THE COURT: Okay, what paragraph? I have it open  
13 in front of me as well.

14 MR. PHILLIPS: It's A, Section of Officers and  
15 Directors, Number 9.

16 MR. FERRARO: Yes, I'm there.

17 THE COURT: Go ahead.

18 MR. PHILLIPS: Okay. The sentence that says 'I  
19 discussed the selection process with the Committee and the  
20 Plan Sponsor and understand that it was, is, and will be  
21 consistent with the . . . Holders of Claims, the Claims and  
22 Interests and public policy.' Why do you say that?

23 MR. FERRARO: I did discuss the selection of the  
24 Board with the cochairs of the Committee, and Steve Kokinos  
25 of Fahrenheit. And I think that their selection process was



1 robust, and I think they picked a really good Board.

2 MR. PHILLIPS: And why do you believe it's  
3 consistent with the interests of the holders of the claims  
4 and interests?

5 MR. FERRARO: I think that there's representation.  
6 the UCC was able to -- the creditors picked the vast  
7 majority, the majority of the Board seats. So -- and there's  
8 representation from the creditors, there's also Board  
9 observers. I think the interests are aligned.

10 MR. PHILLIPS: Okay. On Paragraph Number 20  
11 discussing the Third-Party Release. You state that 'the  
12 Third-Party Release is a wholly consensual release and that  
13 all Holders of Claims entitled to vote had the opportunity  
14 to opt out of the Third-Party Release.' Do you think that  
15 there is a difference between a wholly consensual and a  
16 coercive release?

17 MR. BROWN: Objection.

18 THE COURT: Sustained.

19 MR. PHILLIPS: Why do you believe that the release  
20 was wholly consensual?

21 MR. FERRARO: It was on the ballot. Folks could  
22 opt out.

23 MR. PHILLIPS: Could you opt out of it if you  
24 voted yes?

25 MR. FERRARO: My understanding is, yes.

1 MR. PHILLIPS: I don't believe that's correct.

2 MR. FERRARO: Maybe I'm confused, I'm sorry. You  
3 vote for the plan, then, yeah, you're, you're supporting the  
4 releases.

5 MR. PHILLIPS: All right. And if you wanted to  
6 avail yourself of the preference avoidance settlement, could  
7 you opt out of the release?

8 THE COURT: If you know the answer, go ahead.

9 MR. FERRARO: I don't. I'm, I'm stalling, I  
10 apologize, sir.

11 THE COURT: No, it's not stalling. The Plan is a  
12 lengthy document. The Ballot was a lengthy document. If you  
13 know the answer, you can answer it.

14 MR. FERRARO: I do not know the answer.

15 THE COURT: Otherwise, it's okay.

16 MR. FERRARO: Yeah, I do not know the answer.

17 THE COURT: Go ahead, Mr. Phillips.

18 MR. PHILLIPS: Okay. So, are you still concluding  
19 that the release was wholly consensual.

20 MR. FERRARO: Yes.

21 MR. PHILLIPS: On Paragraph 21, you mention  
22 receiving informal comments from the SEC. What were those  
23 comments?

24 MR. FERRARO: My understanding is, if a class was  
25 deemed to reject, that they would have -- they would not --

1 they would need to opt into the release.

2 MR. PHILLIPS: That was the comment from the SEC?

3 MR. FERRARO: That's my understanding.

4 MR. PHILLIPS: Okay. And when you said  
5 'exculpation,' which I know Ms. Cornell covered extensively,  
6 Paragraph 26, how many exculpation provisions have you  
7 previously applied upon?

8 MR. BROWN: Objection.

9 THE COURT: Sustained.

10 MR. PHILLIPS: On what basis do you believe that  
11 the exculpation provision in the plan is appropriate?

12 MR. FERRARO: I think I testified to this earlier.  
13 I think it's a critical component, and it was arms-length  
14 transaction with these parties. They're supporters of the  
15 plan and they've contributed to the plan.

16 MR. PHILLIPS: And Ms. Cornell dug into this in  
17 Paragraph 27 a little bit. But you stated that 'The  
18 exculpation provision is critical to ensuring that funds  
19 could be returned to creditors as promptly as possible  
20 through the transactions that are approved by the Bankruptcy  
21 Court . . .' Is it critical to all the exculpated parties,  
22 or are there only certain parties that are exculpated that's  
23 critical so that funds can be returned?

24 MR. FERRARO: We went through some examples on  
25 exculpations. I think that they're critical.

1 MR. PHILLIPS: So why, for example, is it critical  
2 that the Debtors' attorneys, K & E, be exculpated for the  
3 funds to be returned?

4 MR. FERRARO: I mean, they're part of that, they  
5 are part of that process. They are part of contract  
6 negotiations, they are part of setting up the way in which  
7 the different counter-parties -- Celsius, the Debtor and  
8 PayPal and Coinbase -- interact.

9 MR. PHILLIPS: But why do they need the protection  
10 of the exculpation? They're highly sophisticated lawyers and  
11 been paid significant fees to set this up appropriately. Why  
12 do they need the additional protection of the exculpation to  
13 shield them from any potential liability from how the  
14 distribution [indiscernible]

15 MR. FERRARO: We're not really -- there's, there's  
16 -- we're not really giving up anything, we know of no issues  
17 where there's any potential claims, causes of action against  
18 any of these folks. So, I mean, we -- these -- we've gotten  
19 to a good place in this case with the contribution of all  
20 these parties, and I think that's the reason why we're  
21 comfortable giving these exculpations.

22 MR. PHILLIPS: Doesn't exculpation cover known and  
23 unknown claims?

24 MR. FERRARO: That's my understanding. And as I  
25 said, we -- there is nothing that we know that would, you

1 know, prevent us. There's been tons of investigations that  
2 have gone into this, from the examiner to the special  
3 Committee, to the UCC. And all of these parties have come  
4 out clean on this.

5 MR. PHILLIPS: I'm not saying that they did  
6 anything wrong, but I'm saying that they should stand up for  
7 their work on their own two feet, not be shielded by  
8 exculpation. I don't understand that.

9 THE COURT: That may be your position, but ask  
10 questions.

11 MR. PHILLIPS: So why do you think that the  
12 professionals who advise both the Debtor and the Committee  
13 are in need of exculpation for the distributions to actually  
14 be -- to have effect, to actually take place and have  
15 effect?

16 MR. FERRARO: I mean, I think we've gone through  
17 some of these details. Both parties have reviewed the  
18 contracts. Both parties, UCC advisors as well as the  
19 Debtors' legal advisors, helped negotiate the contract, set  
20 up the processes for the distribution with the Debtors'  
21 internal team. So significant contributions have been made.

22 MR. PHILLIPS: That's all I have.

23 THE COURT: Thank you very much, Mr. Phillips.  
24 Anybody else wish to cross-examine?

25 MR. BRONGE: Your Honor, yes. This is Johan

1 Bronge, Pro Se Creditor.

2 THE COURT: Okay, Mr. Bronge, go ahead.

3 MR. BRONGE: Yes. Good morning, Mr. Ferraro.

4 MR. FERRARO: Good morning.

5 MR. BRONGE: I'm a [indiscernible] and a CEL  
6 accountholder on the CEL platform. I want to ask you a  
7 little bit about ownership at the, of the collateral. And to  
8 do that, I would like to refer to the Terms of Service  
9 Version 7 that is Docket 393, and it starts on Page 858.

10 THE COURT: Mr. Bronge, Mr. Bronge?

11 MR. BRONGE: Yes.

12 THE COURT: I ordered that anybody wishing to use  
13 a document in cross-examination had to post it on the docket  
14 by 5:00 p.m. yesterday. I can't magically -- I'm sorry, I  
15 can't magically make it appear for purposes of cross-  
16 examination. If you wish to ask --

17 MR. BRONGE: But I think this is --

18 THE COURT: Don't, don't interrupt me. If you wish  
19 to ask questions without the use of documents, if the  
20 witness knows about it, he can. But, you know, I'm  
21 permitting people to cross-examine by using Zoom, but it was  
22 essential that everyone know what documents anybody wishing  
23 to cross-examine is using, they be made available on the  
24 docket last night. So I'll permit you to continue with your  
25 questioning, but not referring to documents that have not

1       been provided for cross-examination.

2               MR. BRONGE: This is under exhibit list of the  
3 Debtor. So it's in the, the docket as well.

4               THE COURT: Mr. Bronge, if you wish to cross-  
5 examine on a document, you have to post it by 5:00  
6 yesterday. If you wish to --

7               MR. BRONGE: Okay.

8               THE COURT: -- ask questions without regard to  
9 documents, go ahead and do that.

10              MR. BRONGE: All right. Mr. Ferraro, could you  
11 explain what rationale the Debtor has to consider the  
12 collateral property of the estate?

13              MR. FERRARO: I mean, somewhat of a legal  
14 question. But in reviewing the Terms of Use, I mean, there's  
15 language that says you can pledge, repledge, lend out, et  
16 cetera. It's pretty consistent with the Terms of Use there.

17              MR. BRONGE: So in reference to your answer, there  
18 is a -- we could agree that there is a distinction between  
19 ownership title and pledging or using an asset.

20              MR. BROWN: Objection, Your Honor.

21              THE COURT: Sustained.

22              MR. BRONGE: So, is it possible to use an asset  
23 without owning an asset?

24              MR. BROWN: Objection.

25              THE COURT: Sustained.

1 MR. BRONGE: Can you explain how you define  
2 ownership from the Debtor in relation to assets?

3 MR. BROWN: Objection, Your Honor.

4 THE COURT: I'm going to permit the witness to  
5 answer. It's not, he's not a lawyer and he's not giving a  
6 legal opinion. If you're able to answer that, go ahead.  
7 Otherwise, please say.

8 MR. FERRARO: Can you please restate the question?

9 MR. BRONGE: Yes. I want to understand how the  
10 Debtor determines the ownership status of an asset. What  
11 they base those on.

12 MR. FERRARO: I'm not a lawyer. I think that's  
13 clear in the Terms of Use.

14 MR. BRONGE: Okay. So may I ask a procedure  
15 question to the Judge?

16 THE COURT: Go ahead.

17 MR. BRONGE: Yes. If I want to examine the  
18 conditions in the TOS that is listed on that Debtors'  
19 exhibit list, how should I do that?

20 THE COURT: If it's listed on the Debtors' exhibit  
21 list, I have all of those documents in front of me. I'll  
22 permit you to use the exhibits that the Debtor marked.  
23 They're all before the Court. They're all before any  
24 parties. So yes, you can go ahead and do that. Just identify  
25 the exhibit and give everyone a chance to pull it out, okay?



1 MR. BRONGE: Yes. Okay. I think what I tried to do  
2 originally is the exhibitor list, I think it was 44 on the  
3 Debtor, on the Debtor list presented, and it's reference to  
4 the Terms of Service.

5 THE COURT: Well, Exhibit 44 is the Declaration of  
6 Mr. Ferraro. It was marked and admitted in evidence this  
7 morning.

8 MR. BRONGE: Exactly.

9 THE COURT: But it does not have Terms of Service  
10 or --

11 MR. BRONGE: Yes it --

12 THE COURT: Terms of Use attached.

13 MR. BRONGE: It does, it does have it as a  
14 reference.

15 THE COURT: Well, it does not have the exhibit.  
16 Hold on, I think the, the Debtors' counsel is going to help  
17 you out on this one.

18 MR. BROWN: Going to try to, Your Honor.

19 THE COURT: Yeah.

20 MR. BROWN: The Terms of Service were admitted  
21 into evidence as Exhibit 38. They're not in the binder,  
22 they're -- that's the paragraph that was referenced in  
23 Exhibit 44 that we went through. I have a binder with  
24 Exhibit 38. I can bring it to Your Honor and Mr. Ferraro so  
25 everybody has a copy.

1 THE COURT: Please. Thank you.

2 MR. FERRARO: Could he also bring me another  
3 water? It's a lot of talking, sorry.

4 THE COURT: There probably is water in that  
5 pitcher.

6 MR. FERRARO: Oh, oh, even better. Thank you.

7 THE COURT: There should. If not, my apologies.

8 MR. FERRARO: Yeah, yeah, I think you're right. I  
9 assumed that was just there for aesthetics.

10 THE COURT: No, no. Aesthetics and for your use.

11 MR. FERRARO: Okay, thank you, thank you. Okay.

12 THE COURT: Exhibit 38 has been placed in front of  
13 the witness. It's Terms of Use --

14 MR. BROWN: And Your Honor --

15 MR. BRONGE: Thank you. So may I --

16 THE COURT: Hold on just a second.

17 MR. BROWN: I just want to clarify before  
18 Mr. Bronge gets going here. Exhibit 38, as I stated  
19 previously, is a compilation of all Terms of Service that  
20 were filed on the docket previously. I can get that docket  
21 entry. I don't know what page, which version of the Terms of  
22 Service, what he's interested in. So Exhibit 38 is  
23 approximately 11, 1,200 pages.

24 THE COURT: Okay, so Mr. Bronge, you're not here,  
25 so you don't see it. But the --

1 MR. BRONGE: I have it here, so --

2 THE COURT: Just a second.

3 MR. BRONGE: -- I will be fine.

4 THE COURT: -- 38 is 1,026 pages long. It has a  
5 compilation of all of the versions of the Terms of Use,  
6 starting with Terms of Use 1. So you need to be more  
7 specific as to which version of the Terms of Use --

8 MR. BRONGE: I will --

9 THE COURT: -- you're referring to.

10 MR. BRONGE: -- I will be extremely specific, Your  
11 Honor. I would like to go to Page 858.

12 THE COURT: All right, just a second. All right, I  
13 have it open in front of me. Mr. Ferraro, when you have Page  
14 858 of 1,026 open, just please tell me that.

15 MR. FERRARO: I'm there.

16 THE COURT: Go ahead, Mr. Bronge.

17 MR. BRONGE: Thank you. So this page is Celsius  
18 Loan Terms and Condition, and this is in reference to  
19 Version 7. Version 7 is the conditions under which I took my  
20 first loan. So that's why I refer to this one. Because also  
21 in this document it states that the loan is controlled by  
22 the version of the TOS that was in force when the loan was  
23 taken. So if we move on to definitions, Number 3, I would  
24 like to understand -- I would like to know your  
25 understanding of that sentence's definitions Number 3. If

1 you could read it, please.

2 MR. FERRARO: Number 3. Collateral means the  
3 amount in eligible digital assets as provided by the  
4 Borrower to the Lender as security for the loan.

5 MR. BRONGE: Okay. Is there anything in that  
6 statement that indicates that I have transferred ownership  
7 in your opinion?

8 MR. BROWN: Objection. Calls for legal conclusion.

9 THE COURT: Overruled. It says what it says,  
10 Mr. Bronge.

11 MR. BRONGE: Yes, and I'm trying to understand how  
12 the Debtor can consider the collateral his property, and  
13 that's why I want to understand, what in this sentence  
14 indicates that this is the Debtor's property.

15 MR. FERRARO: I don't think that that's the  
16 sentence that refers to the property. That's talking about  
17 the collateral that's provided by the borrower as security  
18 for the loan.

19 MR. BRONGE: Okay, so, that's fine, so we  
20 understand, from this sentence, the collateral has no --

21 THE COURT: Just ask your question, Mr. Bronge.

22 MR. BRONGE: Okay, next -- all right. Next, I  
23 would like to go to Page 859 under ineligibility and  
24 Application [indiscernible] D. So can you see what that  
25 says?

1 MR. FERRARO: Celsius receives the collateral from  
2 you and.

3 MR. BRONGE: Yeah, so, just want to state that  
4 this collateral comes from the borrowers there, is that  
5 correct?

6 MR. FERRARO: You broke up a little bit. That  
7 collateral comes from what?

8 MR. BRONGE: It's the collateral -- my  
9 understanding, and I want to understand if the Debtor has  
10 the same, is that the collateral comes from the borrower.

11 MR. FERRARO: For security on the loan, yes.

12 MR. BRONGE: Thank you. Then we move to Page 860,  
13 Item 1. So I can read the relevant part here. It's in --  
14 from the sentence after what is called deferred event. It  
15 says Celsius may immediately liquidate the corresponding  
16 amount from your collateral. Would you consider that meaning  
17 the borrower's collateral, or is this somehow the Debtor's  
18 collateral?

19 MR. FERRARO: I think it's referring to the  
20 collateral that was posted to secure the loan.

21 MR. BRONGE: So, but 'your' in this sentence,  
22 doesn't that refer to the borrowers, the owner of the  
23 collateral?

24 MR. FERRARO: No, I think it's referring to the  
25 one that provided the collateral for the loan. At least,

1 that's my reading. Not a lawyer, again.

2 MR. BRONGE: So 'your collateral' in your mind is  
3 not the borrower's, it is somebody else's. Even though it  
4 states to the borrower.

5 MR. FERRARO: Provided by the borrower as security  
6 for the loan, security interest for the loan.

7 MR. BRONGE: I'm just reading -- I cannot put in  
8 any words there, I'm just reading the sentence as it is. So  
9 'your collateral' do you consider that be 'your' referring  
10 to the Debtor in this case or the borrower?

11 MR. FERRARO: I think it's referring to the  
12 borrower who provided collateral as security for the loan.

13 MR. BRONGE: All right. So there is a number of  
14 sentences where it always refers to 'your collateral.' And  
15 since 'your' in this, in this context would be the borrower  
16 who provided the collateral, is that your understanding?

17 MR. FERRARO: I think, I think we went over this a  
18 couple times. My understanding is it's referring to that the  
19 borrower provided collateral as security interest for the  
20 loan.

21 MR. BRONGE: Okay, so we continue here. If we go  
22 to Page 862, under Collateral Item C. So here, I can read  
23 the sentence. It says 'Collateral shall be subject to a  
24 pledge for Celsius' benefit in accordance with the terms  
25 herein.' Can you explain how that sentence transfers

1 ownership and title of the collateral?

2 MR. BROWN: Objection, Your Owner. Calls for a  
3 legal conclusion.

4 THE COURT: Overruled. If you know.

5 MR. FERRARO: So, I'll do my best.

6 THE COURT: You're not testifying as a lawyer.

7 MR. FERRARO: I'm not testifying as a lawyer, I  
8 will do my best. I think what it says here is subject to a  
9 pledge for Celsius' benefit. And if I may, on Page 869 of  
10 1,126, Section B --

11 MR. BRONGE: Excuse me, I --

12 THE COURT: Yes.

13 MR. BRONGE: You broke up, so --

14 THE COURT: Okay, [indiscernible] go ahead. Just  
15 read it loudly.

16 MR. FERRARO: Sorry. Page -- I have this huge  
17 binder on my lap and it's hard to get too close, so --

18 THE COURT: Me, too.

19 MR. FERRARO: -- on Page 869 of 1,126, Conditions  
20 to the Lender Obligation, D, this kind of refers to how the,  
21 how the borrower agrees that the lender may, for its own  
22 account, pledge and repledge.

23 MR. BRONGE: Okay. I understand. Now, in your  
24 review, is pledging an asset the same as transferring title  
25 of an asset?

1 MR. BROWN: Objection, Your Honor.

2 THE COURT: Sustained.

3 MR. BRONGE: Okay. What -- if, if you contrast the  
4 statements in this section with the statements of the UK  
5 Lending where there is a sale and repurchase agreement,  
6 which is -- you can find much later in this. I can refer to  
7 the exact pages. That -- the statements are very different  
8 where they explicitly state you transfer title. I would like  
9 to understand where in this Terms of Service Version 7 there  
10 is a statement that I transfer ownership title. Do you have  
11 that? Do you know about any such statement in this version?

12 THE COURT: I'm going to sustain an objection to  
13 the questions. I will permit a question as to whether, you  
14 know, there is anything in this version of the Terms that  
15 you believe transfers ownership.

16 MR. FERRARO: From my reading of this, it implies  
17 transfer of ownership, right to pledge. Not a lawyer, again.  
18 Lender may do so without retaining, retaining its possession  
19 to control for delivery. Borrower agrees that it can do it  
20 for its own account. So it's obviously transferring a lot of  
21 rights to Celsius.

22 THE COURT: Ask your next question, Mr. Bronge.

23 MR. BRONGE: Yes. So you consider transferring  
24 rights as the same as transferring, as the same as  
25 transferring title?



1 MR. BROWN: Objection, Your Honor.

2 THE COURT: Sustained.

3 MR. BRONGE: Okay, so can I maybe ask him a  
4 different way, if --

5 THE COURT: Let me --

6 MR. BRONGE: Yes.

7 THE COURT: Go ahead, Mr. Bronge.

8 MR. BRONGE: Yeah, I'm trying to get the Debtor to  
9 explain the way they interpret this section. I don't know if  
10 I should ask --

11 THE COURT: Mr. Bronge, I'm not asking questions  
12 of the witness, but this is a long document. If you look on  
13 Page 870 under Consent to Celsius' use of your Digital  
14 Assets --

15 MR. BRONGE: Yes, that is --

16 THE COURT: -- transferring with all, transferring  
17 with all attendant rights of ownership. So I think --

18 MR. BRONGE: Yes, let me --

19 THE COURT: -- you're asking a non-lawyer  
20 questions about a lengthy document.

21 MR. BRONGE: How in proceedings shall I ask these  
22 questions? Should it be at a later date?

23 THE COURT: I'll let you continue with questions,  
24 but you can't ask for legal opinions. This is a lengthy  
25 document.

1 MR. BRONGE: So how can I ask --

2 THE COURT: -- paragraph on Page 870, under  
3 Consent to Celsius' use of your digital assets, where it  
4 says --

5 MR. BRONGE: May I address that question?

6 THE COURT: -- it says with all right, attendant  
7 rights of ownership.

8 MR. BRONGE: It says, first of all, that --

9 THE COURT: I'm not going to have a legal argument  
10 about this.

11 MR. BRONGE: No.

12 THE COURT: If you want to ask a question, ask,  
13 questions --

14 MR. BRONGE: I understand.

15 THE COURT: -- of the witness, I'm going to permit  
16 you to do that.

17 MR. BRONGE: Yes. I understand. But I will not  
18 continue these questions because obviously I cannot answer,  
19 ask them to the right person. So is there any time in the  
20 hearing I can ask these legal questions regarding this Terms  
21 of Service?

22 THE COURT: You can't ask the lawyers about it.  
23 You'll, you know, when we get to closing argument and you  
24 wish to argue that a document in evidence means what you say  
25 it means, you can argue that. But that's pure argument, not

1 evidence. The document itself is in evidence. And you can --  
2 when we get to the conclusion of the case, if you wish to  
3 file a memorandum of law, I'll permit you to do that. But  
4 this is not a proper subject for a question of this non-  
5 lawyer.

6 MR. BRONGE: Okay. So in that case, I --

7 THE COURT: Do you have any other questions,  
8 Mr. Bronge?

9 MR. BRONGE: Just one quick question on the  
10 valuation of the CEL Token, if I May.

11 THE COURT: Go ahead.

12 MR. BRONGE: I would like to understand the reason  
13 why the Debtor are distinguishing the CEL Token as different  
14 from all the other tokens except Bitcoin, that it has been  
15 on the Celsius platform, and why this is singled out for  
16 some kind of reasoning for that rather than all the other  
17 coins taken the value at the bankruptcy.

18 MR. FERRARO: I mean, I think CEL Token, there's a  
19 few things. One, the manipulation of the token. And two, the  
20 fact that 95 percent of it was locked on the platform and  
21 there was limited trading volume. It was kind of a  
22 dislocated market at that point. Those are just two things  
23 that are top of mind.

24 MR. BRONGE: So do you know that that does not  
25 apply to any of the other tokens? Because they are all the

1 same except Bitcoin. They have a central entity and they  
2 have treasuries and they have companies in charge of them.

3 THE COURT: Mr. Bronge, the CEL Token is a native  
4 token of the Celsius platform.

5 MR. BRONGE: Let me make [indiscernible]

6 THE COURT: Do you have a question for the  
7 witness?

8 MR. BRONGE: No, I have no more questions.

9 THE COURT: All right. Anybody else wish to cross-  
10 examine?

11 MR. ABREU: Your Honor, Artur Abreu  
12 [indiscernible] I want to be very brief and I just want to  
13 ask question to the witness.

14 THE COURT: Go ahead, Mr. Abreu.

15 MR. ABREU: Thank you. I am Pro Se Creditor and I  
16 actually bought CEL outside, outside, outside  
17 [indiscernible] just so, just a disclosure. So, Chris  
18 Ferrera, you mentioned that in this hearing that mining has  
19 had significant hurdles, but it has been successful  
20 considering the circumstances. You also refer that you had  
21 implemented or were successful in hedging strategies. As I  
22 am aware, you have significant experience in banking. Is it  
23 fair to also argue that hedging in banking is a essential  
24 strategy to mitigate risk?

25 MR. BROWN: Objection, Your Honor, relevance.

1 THE COURT: overruled.

2 MR. FERRARO: I think any manager of a business  
3 should understand the risks and try to mitigate them to a  
4 residual level that's acceptable. So when we look at the  
5 mining business, we think about what our main kind of  
6 components of risk, BTC -- that we can hedge, BTC price and  
7 energy. When we think about banking, there's many different  
8 types of market and credit risk in which you do the same  
9 type of exam--, you know, you cascade risk and you do the  
10 same type of analytics related to.

11 MR. ABREU: Thank you, thank you. Could you  
12 explain your understanding of hedging, in the basic form.

13 MR. FERRARO: With regards to?

14 THE COURT: Keep it, you know, focused on Celsius  
15 and --

16 MR. ABREU: Yeah, okay, so let's imagine this.

17 THE COURT: This is not an educational course in  
18 hedging. Go ahead.

19 MR. FERRARO: Okay.

20 MR. ABREU: Well let me rephrase it, then.

21 THE COURT: He's going to answer your question. Go  
22 ahead.

23 MR. ABREU: Okay.

24 MR. FERRARO: Yeah, I think there's two things.  
25 One first comes to mind, and I think that's predominantly

1 what we're discussing here, is the hedging out of the power  
2 costs related to running the mining rigs.

3 MR. ABREU: Okay, if you were to hedge CEL Token,  
4 what will the company do? I'm sure you probably had the  
5 discussions internally or you see some of the strategies.  
6 Can you share to the Court what type of strategies in the  
7 case of hedging CEL Token would imply?

8 MR. FERRARO: I joined Celsius in March of 2022.  
9 You know, we froze in mid-June. I was involved in a lot of  
10 conversations, did a lot of work during that time period. I  
11 do not remember talking about macro hedges on CEL Token. And  
12 I'm not even sure there's market depth to do it at the scale  
13 that you're implying.

14 MR. ABREU: Okay, let me then tell you this. Do  
15 you think shorting is an important tool to do an hedge of an  
16 asset?

17 MR. BROWN: Objection.

18 THE COURT: Overruled. Focus on Celsius. If you  
19 have an answer, go ahead. If you haven't, you don't have an  
20 answer, just say that.

21 MR. FERRARO: I think hedging depends on the risk,  
22 the specific risk you're trying to hedge out and the cost of  
23 hedging out that risk versus the tail you're trying to  
24 protect against.

25 THE COURT: Next question, Mr. Abreu.

1 MR. ABREU: Let me say this. Do --

2 THE COURT: Just ask questions. I don't want any  
3 statements.

4 MR. ABREU: Okay, yeah, yeah, yeah.

5 THE COURT: Just ask questions.

6 MR. ABREU: Are you familiar with shorting? Do you  
7 understand shorting an asset?

8 MR. FERRARO: I'm not a shorter. In my investment  
9 --

10 MR. ABREU: But you understand, you understand?

11 MR. FERRARO: I understand it generally, yes.

12 THE COURT: You understand, it's one of the things  
13 that's said, that certainly an allegation that insiders  
14 manipulated the price of the CEL Token certainly near the  
15 end, correct?

16 MR. FERRARO: Yeah, my understanding is that the  
17 CEL Token was manipulated, really, throughout its existence,  
18 yeah.

19 THE COURT: Okay.

20 MR. ABREU: Okay, so as you said, that you have  
21 some basic understanding of short. Do you think shorting can  
22 add market value to an asset, even if the underlying  
23 business is bankrupt? I'm sure with your experience in  
24 financials that you have seen companies on the market that  
25 went bankrupt but still their underlying stock spikes in

1 price, even when the company is bankrupt. Do you think  
2 shorting can add some value to a bankrupt company or asset  
3 tied to this company?

4 MR. BROWN: Objection.

5 THE COURT: Sustained.

6 MR. ABREU: Okay. Just do you also believe that  
7 faced with the level of misrepresentation that has been said  
8 in court by officers and the company itself, do you think  
9 it's fair to say that the market was not completely aware of  
10 the level of risk and leverage that the company was in at  
11 the pause and at the petition date?

12 MR. FERRARO: Yeah, I think the general financial  
13 conditions of Celsius leading up to the pause were very  
14 poor. And I'm not sure that that was reflected in the  
15 disclosures to the marketplace.

16 MR. ABREU: There were many instances in this  
17 process that I believe the company itself was trying to come  
18 with a reorg. Which, let's say previous [indiscernible] was  
19 putting CEL as maybe a way to reorg it around it. When was  
20 this completely taken out of the discussion and it was then  
21 pursued the current framework reorg plan?

22 MR. FERRARO: CEL has never been taken out of the  
23 discussion. We've always thought about CEL in an equitable  
24 way to solve this issue from the beginning.

25 MR. ABREU: When were the employees and the



1 company -- when did the previous leadership and their  
2 associated reorg [indiscernible] removal from the company?

3 MR. FERRARO: It was never removed. This whole  
4 process has been iterative and learning and organic. As I  
5 mentioned earlier in my testimony, we spent a lot of time  
6 developing an internal standalone plan. We determined that  
7 the NovaWulf sponsor plan as a stalking horse bid was the  
8 right route and went into the auction accordingly.

9 MR. ABREU: About company compensation. Are you  
10 aware of whether your former insiders and former officers,  
11 former officers of the company who received CEL as  
12 compensation? If any of former officer are not included in  
13 the excluded parties from this plan. So are former officers  
14 with significant compensations of CEL not an excluded party?

15 MR. FERRARO: There are people who have  
16 concentrations of CEL who through the investigations was not  
17 determined that they were not bad actors. And because of  
18 that, they're not on the excluded party list. That's my  
19 understanding.

20 MR. ABREU: In the matter of compensation to those  
21 officers I'm -- this former officers, was this compensation  
22 given at a zero bust or the employee, former employee,  
23 meaning they just received a zero balance and had to pay  
24 taxes?

25 MR. FERRARO: It was part of the compensation

1 structure. Employees were rewarded in salary, discretionary  
2 bonuses, equity up front and CEL Tokens. So this was one of  
3 the key components of it.

4 MR. ABREU: So you are saying that former officers  
5 and employees were both compensation in terms of equity and  
6 CEL Token at zero value for -- at zero cost for them, but at  
7 cost for the company and for the investors were potentially  
8 being diluted by more market supply. Is that a fair  
9 assessment?

10 MR. FERRARO: I look at it as total compensation  
11 in which CEL Token equity and salary and discretionary  
12 bonuses are different components of compensation. So it was  
13 included for numerous employees.

14 MR. ABREU: So it's fair to say that at some  
15 point, an officer could just receive both CEL as  
16 compensation at zero cost and equity on the company at zero  
17 cost, is that right?

18 MR. FERRARO: They're working for --

19 MR. ABREU: There was, mm-hmm, so there were two  
20 vehicles for compensation, correct?

21 MR. FERRARO: It's a full compensation structure  
22 in which employees committed their time and effort in return  
23 for compensation. In which, I just named four main  
24 components of that compensation.

25 MR. ABREU: Yeah, and they will also receive a

1 salary and then compensation on top of that, what could be  
2 CEL or equity, correct? So that's what you're saying?

3 MR. FERRARO: I said it four, four times. There's  
4 four components of compensation, and employees were largely  
5 eligible for those four components.

6 THE COURT: Ask your next question.

7 MR. ABREU: Yeah, so is it fair to say that  
8 according to [indiscernible] Declaration by the Debtors,  
9 that 94 percent of the CEL supply was locked.

10 MR. FERRARO: That's my understanding --

11 MR. ABREU: Yeah, that's, that's around --

12 MR. FERRARO: In reading -- sorry, sir. In  
13 reading, in reading that Declaration you're referring to,  
14 that's my understanding.

15 MR. ABREU: Yeah, but I think you have previously  
16 mentioned --

17 THE COURT: Let's not argue, ask questions.

18 MR. ABREU: Yeah, so my point here, and final  
19 question, is that I -- let me just give a follow up for the  
20 next question. When you were shorting, you have to put  
21 collateral. So imagine that I'm going to short CEL Token,  
22 which is at \$1. I use \$10,000 to take a loan of CEL at \$1,  
23 and then I, then I sell into the market. I receive \$1,000 of  
24 CEL. So now I have \$2,000 of CEL but a debt of \$1,000.

25 MR. FERRARO: Mm-hmm.

1 MR. ABREU: If the price of CEL, because I have a  
2 liability, a debt to the exchange, which is 1,000 CEL  
3 Tokens, if the price increases by 100 percent, which means  
4 it doubles, it's your understanding that I will be  
5 liquidated and the previous collateral that I use to take  
6 that short position or take that loan on CEL will be  
7 liquidated and used, and will be transferred to the market.  
8 Is that a clear, a correct assessment of shorting?

9 MR. BROWN: Objection.

10 THE COURT: Sustained.

11 MR. ABREU: I just, just to finalize, what is the  
12 percentage of loans, of international loans in terms of  
13 users? Is that 50 percent, 51 percent? Can you give a round  
14 number?

15 MR. FERRARO: I don't have the statistics in front  
16 of me, but I think generally it's about half. Generally.

17 MR. ABREU: Do you understand that there was a  
18 difference between the loans international and domestic, and  
19 US-based loans? Do -- are you aware of any differences?

20 MR. FERRARO: The UK comes to mind in terms.

21 MR. ABREU: Let me give you an example. I was an  
22 international creditor, and I took a loan. I could pay with  
23 CEL, right? Because I was international. There were a few  
24 options that I got in discount on my interest because I was  
25 paying with CEL. Was that a product that Celsius had just

1 for international users, but US users were not -- this  
2 product was not available?

3 MR. FERRARO: I -- sorry, I didn't run product and  
4 while this product was active I had a very short amount of  
5 time with the company, so I'm not knowledgeable of all the  
6 details. So I don't want to answer that question because I  
7 don't -- I'm not --

8 MR. ABREU: That's your, I believe it's your  
9 Declaration --

10 THE COURT: Ask the next question.

11 MR. ABREU: Okay. You -- was CEL creditors -- did  
12 US users got the same products available to them in terms of  
13 CEL? Was there an incentive to purchase CEL as international  
14 users?

15 MR. FERRARO: I'm sorry, I'm not following the  
16 question. Was there an incentive --

17 MR. ABREU: Was there, was there an incentive for  
18 US users to purchase CEL [indiscernible]

19 MR. FERRARO: My understanding is there's a tiered  
20 reward system, loyalty system, in which if people hold CEL  
21 they would be entitled to discounts in certain products, et  
22 cetera. So if that's what you're referring to as an  
23 incentive, I mean, that sounds reasonable.

24 MR. ABREU: I believe US users were not --

25 THE COURT: You're not testifying. If you have a

1 question, ask your question.

2 MR. ABREU: Judge, that's it. That's all I wanted.

3 THE COURT: Okay. Thank you. Anybody else have any  
4 other questions?

5 MR. UBIERNA: Yes, Your Honor.

6 THE COURT: Mr. Ubierna.

7 MR. UBIERNA: Okay. Good morning, Ferraro. Before  
8 you have talk about Emergence Incentive Plan [indiscernible]  
9 are you aware that if the plan is approved, you are going to  
10 receive a bonus or award?

11 MR. FERRARO: If certain targets are hit, yes,  
12 that's the way it is written in the plan, yes.

13 MR. UBIERNA: What are your, your responsibilities  
14 as Interim CEO?

15 MR. FERRARO: I'm sorry, I didn't hear that.

16 MR. UBIERNA: What are your, your responsibilities  
17 as Interim CEO?

18 MR. FERRARO: Oh, thank you. Yeah, it's managing  
19 the, the company through the bankruptcy process. Think  
20 working with the legal and financial advisors, reporting  
21 monthly operating reports to the Court. Obviously mining is  
22 an operational business in which we've been deploying rigs,  
23 we talked about hedging and managing that business, et  
24 cetera. Those are the general qualifications. We've also  
25 obviously had to reduce the workforce quite a bit, going

1 from, I think it was 950 plus in early 2022 to the 150 we  
2 have today.

3 MR. UBIERNA: Would that responsibilities include  
4 getting a plan confirmed?

5 MR. FERRARO: I think the goal is to get out of  
6 bankruptcy. The, you know, the responsibility that I feel  
7 personally that I have is to maximize value and do that as  
8 fast as possible. But there are threshold and target dates  
9 in which I hope we hit and we can return crypto to  
10 customers. But, I mean, they're definitely in jeopardy.  
11 These are pretty aggressive targets.

12 MR. UBIERNA: Are you familiar with the Emergence  
13 Incentive Plan performance targets?

14 MR. FERRARO: Yes.

15 MR. UBIERNA: What was your involvement in  
16 drafting the target performance for the work?

17 MR. FERRARO: This was, I think, the compensation  
18 consultant from Alvarez & Marsal will come up and talk about  
19 that in detail. My understanding is that these were drafted  
20 and negotiated between Alvarez & Marsal and M3 on the UCC  
21 side, and then approved by the Special Committee.

22 MR. UBIERNA: Okay. Are you aware that you are  
23 getting a bonus if this Court approves the plan before the  
24 end of October?

25 MR. FERRARO: That is one of the, that is one of

1 the metrics, yes.

2 MR. UBIERNA: Would you say that getting a plan  
3 approved is already in your responsibilities and in your  
4 salary?

5 MR. FERRARO: Getting a plan approved is the goal  
6 of my work. Getting a plan approved by October 31st takes a  
7 lot of weekends and nights.

8 MR. UBIERNA: Why should you get a bonus on top of  
9 your salary for getting the plan confirmed?

10 MR. FERRARO: I'll give you an example. We spent a  
11 tremendous amount of time, tens of hours in negotiating, me  
12 and my executive team, in setting up these agreements with  
13 the distribution partners. The rate and the speed at which  
14 we're doing this is, to me, really impressive, and we're  
15 trying to do it in order to hit those goals.

16 MR. UBIERNA: Okay. Nothing more, Your Honor.  
17 Thank you.

18 THE COURT: Thank you very much, Mr. Ubierna.  
19 Anybody else wish to cross-examine?

20 MR. SHEIK: Yes, Your Honor. I have some questions  
21 that are just general questions, if I may.

22 THE COURT: Go ahead.

23 MR. SHEIK: Okay. And, all right, so my first  
24 question. Was Simon Dixon ever officially or unofficially  
25 brought in as a consultant or liaison to the Debtor during



1 the audit, and was there ever -- was he ever put under an  
2 NDA for any other reason through the course of this  
3 bankruptcy?

4 MR. FERRARO: My understanding is Simon was  
5 involved in the bidding process with Bank to the Future and  
6 there was an NDA related to that. He's, to me, been very  
7 helpful in educating the community and being part of those  
8 conversations. So I think there was an NDA on --

9 MR. SHEIK: Thank you. That's good to hear. Second  
10 question. Was a formal process for the selection of the  
11 Special Committee of the NewCo followed, can you describe  
12 that process to us?

13 MR. COLODNY: Objection, Your Honor.

14 THE COURT: Overruled.

15 MR. SHEIK: Okay --

16 THE COURT: He can answer the question. I  
17 overruled the objection.

18 MR. FERRARO: Yeah. So --

19 THE COURT: Go ahead, Mr. Ferraro, if you know the  
20 answer, go ahead and answer.

21 MR. FERRARO: I'll do my best. I wasn't in the  
22 driver seat on this, the Committee was on the driver seat of  
23 this. As I mentioned earlier in my testimony, I did discuss  
24 it with the co-chairs as well as the proposed CEO of  
25 Fahrenheit. So that's kind of my level of knowledge. I, as I

1 said, I'm impressed with the people that they've selected.

2 I think there's a large amount of creditor support and  
3 creditors on the Board and on the Board observer roles.

4 MR. SHEIK: Okay, great. And Mr. Ferraro, I  
5 understand that you have a financial services background.  
6 The reason why I'm asking you these questions is because,  
7 you know, there's a specific process that is followed in  
8 hiring or selecting of, you know, Board members, or any kind  
9 of position in the financial services realm. And, and  
10 especially when it comes to having fiduciary responsibility  
11 or any financial oversight in, you know, in a manner such as  
12 ours. And I'm an Earn creditor, by the way, just for  
13 everybody to know.

14 But my question is, so when the process was rolled  
15 out, you know, was there any specific job description or a  
16 criteria of selection for, you know, these Board members to  
17 be appointed to the select -- to the Board Committee?

18 MR. FERRARO: I don't -- with all respect, I don't  
19 think I'm the right person to answer that question. I was  
20 not involved in setting up the details of the selection.  
21 I've had conversations around --

22 MR. SHEIK: Okay, okay, not a problem. So then,  
23 I'll just ask you a very general question in that sense.  
24 When it -- so in the financial services realm, would anyone  
25 ever hire or appoint somebody in a position like this that

1 has -- well, first of all, there would be a credit report  
2 check that would be done as part of the background check, if  
3 I'm not mistaken.

4 MR. BROWN: Objection.

5 THE COURT: Sustained.

6 MR. SHEIK: Okay. Would anybody be appointed to  
7 this position that has a negative financial -- like, let's  
8 say owes back taxes, for a lien imposed by the federal  
9 government over the last few years.

10 THE COURT: He did not select the Board.

11 MR. SHEIK: I understand. I was just asking  
12 because of his financial services background, that's the  
13 only reason.

14 THE COURT: Objection sustained.

15 MR. SHEIK: Okay.

16 THE COURT: Whoever has a phone in the courtroom  
17 better shut it off. Go ahead, Mr. Sheik.

18 MR. SHEIK: Thank you. You know, my next question  
19 -- and please feel free to object. Again, it was -- I just  
20 wrote these down very quickly because I didn't know I was  
21 going to be able to attend this. But we were told that there  
22 was a special investigator that was hired to look at the  
23 backgrounds of all these that were selected. Why was a  
24 special investigator hired, instead of just doing a standard  
25 background check?

1 MR. BROWN: Objection.

2 THE COURT: Sustained.

3 MR. SHEIK: Okay. Now, I'm going to skip ahead,  
4 then. Okay, so, so when it came to the selection of the  
5 Board and the observers, was it necessary to increase the  
6 number of members from seven appointees on the Board to  
7 nine? Given the true revenue streams for NewCo are A,  
8 staking, which is pretty much set on autopilot. B, mining,  
9 which no one other than USBTC, which is US Bitcoin, mining,  
10 who has the subject matter expertise to add any value to  
11 this process.

12 THE COURT: Mr. Sheik, I'm going to cut you off in  
13 the middle of that question, because it clearly is not a  
14 proper question. If you have more questions to ask, go  
15 ahead.

16 MR. SHEIK: Okay, then. So, why was it necessary  
17 to increase the number of members from seven to nine?

18 MR. FERRARO: I was not part of the selection  
19 Committee, I --

20 THE COURT: Next question.

21 MR. SHEIK: Okay. Now, USBTC was the only company  
22 that brings value to this process. And I believe USBTC -- I  
23 mean, Fahrenheit allowed us to go directly to USBTC. So, as  
24 part of their plan, they gave us an out. So, or, you know  
25 if --

1 THE COURT: Mr. Sheik, Mr. Sheik, okay --

2 MR. SHEIK: Yes.

3 THE COURT: -- you're able to ask questions,  
4 you're not testifying. So if you have questions you wish to  
5 ask, I'm trying to give you some latitude. I understand  
6 you're not a lawyer.

7 MR. SHEIK: Yes.

8 THE COURT: But you can't testify, okay? You can't  
9 testify about facts that are not in the record.

10 MR. SHEIK: Sure, I understand. And thank you, and  
11 be as harsh as possible, it only motivates me to do better  
12 next time.

13 THE COURT: I'm not trying to be harsh.

14 MR. SHEIK: I appreciate.

15 THE COURT: Just try to follow the rules, okay?

16 MR. SHEIK: No, no, not at all. I'm just saying,  
17 I'm just letting you know, you can. I appreciate it. Thank  
18 you very much, Judge. Your Honor. Okay, so, so basically,  
19 you know, if USBTC is the only party that adds value to this  
20 process, why not go to USBTC directly?

21 MR. FERRARO: I, I --

22 MR. BROWN: Objection.

23 THE COURT: Sustained.

24 MR. SHEIK: Okay. Were you physically present  
25 during the mediation between Earn and the Board members?

1 MR. FERRARO: No, I was in Ecuador at my, in my  
2 home office working on the Celsius case. I was not at the  
3 mediation.

4 MR. SHEIK: Did you -- so you did not attend,  
5 whether by Zoom or, you know, electronically somehow?

6 THE COURT: Whatever was said in the mediation is  
7 subject to mediation privilege, and I will not let you  
8 inquire about -- he wasn't there, but whatever happened in  
9 the mediation stays in the mediation.

10 MR. SHEIK: I understand, okay. Well, now that the  
11 mediation was complete, I guess my last question is, you  
12 know, you know, did this -- since I come from the Earn group  
13 and, you know, I feel -- I just wanted to ask, did this  
14 negotiation, according to you, between Earn and the Board  
15 members, really help the Earn in the end, and do you think  
16 that the mediation was necessary?

17 MR. BROWN: Objection.

18 THE COURT: Sustained.

19 MR. SHEIK: Those are all the questions I had,  
20 Your Honor. Thank you very much.

21 THE COURT: Anybody else wish to cross-examine?

22 UNIDENTIFIED SPEAKER: Yes, Your Honor, I have one  
23 additional set of questions.

24 THE COURT: You already had your chance. I'll only  
25 hear anybody who hasn't questioned yet.

1 MR. PATTON: Your Honor, Jeff Patton, Pro Se  
2 Creditor.

3 THE COURT: Go ahead, Mr. Patton.

4 MR. PATTON: Good morning, Mr. Ferraro.

5 MR. FERRARO: Good morning.

6 MR. PATTON: I understood you mentioned earlier  
7 that you joined the company shortly before the pause and or  
8 the bankruptcy filing.

9 UNIDENTIFIED SPEAKER: Great timing.

10 MR. FERRARO: Yeah.

11 MR. PATTON: Is that correct?

12 MR. FERRARO: Yes, that's correct. Both of you are  
13 correct.

14 MR. PATTON: Okay, I just want to touch on a  
15 couple things regarding the plan and the vote and the  
16 ballot. The -- after the filing and prior to voting, the  
17 creditors were divided into, into groups, we've heard there  
18 was classes. Did you take part in that activity?

19 MR. FERRARO: It's, I think that's largely a legal  
20 question, class definition. I understand the classes, I  
21 understand the plan. But the actual -- your question is, I  
22 think, more of a legal question.

23 MR. PATTON: Okay, so you didn't do any work or  
24 participate in any meetings or discussions of how the  
25 classes were determined?

1 MR. FERRARO: No, I think we had general  
2 discussions in formulating the plan. And I think I have a  
3 general understanding of how the classes were formed.

4 MR. PATTON: All right, thank you, thank you. Now  
5 that activity in dividing creditors into classes, you  
6 mentioned was taken on by legal teams prior to, prior to the  
7 development of the plan itself, is that correct?

8 MR. FERRARO: I think they're kind of, in my  
9 opinion, they're kind of aligned and organically done around  
10 the same time, throughout the case. You know, you're always  
11 thinking about kind of your creditors and their needs and  
12 their contractual rights and all that throughout. And I  
13 think that formulates a lot of this.

14 MR. PATTON: All right. Terrific. Do you happen to  
15 have any opinion as far as the principle difference between  
16 creditor classes versus the difference between creditor  
17 classes four and five?

18 MR. BROWN: Objection.

19 THE COURT: Sustained.

20 MR. PATTON: Thank you. Sorry. In terms of the  
21 ballot, under the plan, to your knowledge, was it possible  
22 for a class five creditor to elect to take a lesser  
23 distribution and join class four?

24 THE COURT: These are really legal questions, so I  
25 really -- they're not proper subject for the examination of



1 this witness, Mr. Patton. Any other questions?

2 MR. PATTON: I, I have nothing. I would say  
3 nothing further, but I have nothing. Thank you, Your Honor.

4 THE COURT: Thank you, Mr. Patton. Anybody else  
5 wish to cross-examine? I have some questions.

6 THE CLERK: Judge, there is a Sharon Dow that  
7 raised her hand.

8 THE COURT: Oh, I couldn't see it. So, who is  
9 that, Deanna?

10 THE CLERK: Sharon Dow, last name is spelled  
11 D-O-W.

12 THE COURT: Okay. Ms. Dow, go ahead if you wish to  
13 ask questions.

14 MS. DOW: Yes, good day, Your Honor. Thank you  
15 very much. I'm Sharon Dow, I am a creditor, and Earn  
16 Creditor. I have a few questions for Mr. Ferraro around the  
17 business plan that he's sponsoring, putting forward.

18 THE COURT: Yes, go ahead.

19 MS. DOW: Yeah, and the reference in exhibits  
20 would be Exhibits 32 in the Mining Business Plan, and 35 in  
21 the Disclosure Statement, Exhibit E.

22 THE COURT: We don't have the exhibits in front of  
23 us, but go ahead and ask your questions. We'll see whether  
24 the witness can answer.

25 MS. DOW: Yes, thank you. My questions are, are

1 more general. First of all, in any business plan in general,  
2 the -- how do you determine -- how do you do a determination  
3 of quality of revenue analysis?

4 MR. FERRARO: Well, you project the revenue. It's  
5 a bottoms-up exercise. You do it by site. It's based upon --  
6 I'm talking specifically mining here. It's based upon site  
7 level. There's a full review of the power costs. We have a  
8 model that kind of predicts the network size, so you can  
9 calculate your kind of market share. So, it's -- and then  
10 there's operational costs, there's profit shares, so the  
11 revenue elements are all loaded and the expense elements are  
12 all loaded and they're done at a site level.

13 MS. DOW: So, what are the key drivers in your  
14 determination of the revenue going forward and its  
15 reliability?

16 MR. FERRARO: What was the last part? And the true  
17 liability?

18 MS. DOW: The revenues going forward and the  
19 reliability of those revenues.

20 MR. FERRARO: Oh, okay, sorry. I mean, it's a  
21 forecast, right? So it's uncertain. So you try to do your  
22 best to take into account a reasonable view of the  
23 marketplace. So we have a view of, kind of, Bitcoin price,  
24 and as I mentioned before, network growth. That gives you a  
25 good view of kind of how much computational power,

1 computational power you have versus the total universe of  
2 Bitcoin miners, which effectively determines what your share  
3 of the rewards awards will be, the block awards. So it's,  
4 it's -- there's many different, as I would say in my old  
5 job, there's many different kind of seeds to the forecast  
6 that are all assumptions. And you do your best to come up,  
7 come up with the right assumptions.

8 MS. DOW: And do you stand by the revenues and the  
9 compute power hash rates in the plan that you've presented?

10 MR. FERRARO: Yeah, I think the deployment  
11 schedules are generally reasonable. I think with the Core  
12 Scientific settlement and the 250 megawatt site in West  
13 Texas, I -- just one man's view, I believe NewCo will beat  
14 those projections, holding constant the Bitcoin price in the  
15 network. The vertical integration should drive wider through  
16 the, through cycle spreads and decrease counterparty  
17 reliance, which are both good things for the support of the  
18 business.

19 MS. DOW: Mr. Ferraro, thank you for that.  
20 Mr. Ferraro, do you happen to know the approximate current  
21 hash rate?

22 MR. FERRARO: We have total miners equate to about  
23 12, 12 exa hash. I think right in production right now it's  
24 probably around 7 exa hash.

25 MS. DOW: And what is the current hash rate and

1 difficulty rating in the market?

2 MR. FERRARO: I don't know off the top of my head,  
3 but I think we're around, somewhere around 3 percent of the  
4 network.

5 MS. DOW: Okay.

6 MR. FERRARO: A little over 3 percent.

7 MS. DOW: Sure. And at what rate does hash rate  
8 and difficulty escalate through a cycle?

9 MR. FERRARO: It depends on --

10 MS. DOW: Are you familiar with that?

11 MR. FERRARO: Yeah, it depends on many different  
12 things. It's quite complex. I think hash rate will be  
13 determined based upon Bitcoin price, energy prices and the  
14 age of the machines and the efficiency of the machines. And  
15 those are key components that go into the forecast.

16 MS. DOW: So one of the key line items in your  
17 forecast is actually hash rate. It's down, Line 7 or 8. It -  
18 - can you share with me what are the underlying assumptions  
19 to the beginning point of that hash rate and how that grows  
20 or adjusts over the five periods in your plan?

21 MR. FERRARO: Yeah, so we're starting from a point  
22 where, you know, as of, as of the end of August we had  
23 80,000, 85,000 miners deployed and hashing. As I mentioned,  
24 you know, we are going through some counterparty  
25 difficulties. So, you know, I actually expect that number to

1 potentially drop. But, with the Core Scientific settlement  
2 and the site in West Texas, I think we're going to have a  
3 plan to deploy -- NewCo has a plan to deploy 40 megawatts  
4 worth of machines very rapidly, I think within 90 days of  
5 that deal closing. We plan to work on that before the  
6 effective date, just to make sure that NewCo has all -- as  
7 many rigs deployed as possible.

8 And then within the forecast there's other  
9 deployment assumptions that are largely done at similar  
10 economics for existing hosting contracts.

11 MS. DOW: Yeah, understood. I actually would like  
12 to explore where the assumptions on the productivity, hash  
13 rate and share of global network, where those assumptions  
14 lie versus current state of the business environment. So are  
15 you aware of what the first period hash rate number is?  
16 'Cause this, this is in your calculation that is a key  
17 driver to the revenue and the number of Bitcoin.

18 MR. FERRARO: I've tried my best to -- sorry if  
19 you were -- I didn't mean to cut you off.

20 MS. DOW: No, you're fine. Please, go ahead.

21 MR. FERRARO: Okay. I've tried my best to memorize  
22 as much as I can. That's not one of them, I apologize. I  
23 think it's -- off of memory, I believe our, our share of the  
24 hash rate was trending flat to down-ish throughout the 5-  
25 year projection. Off of memory, and I could be wrong.

1 MS. DOW: Okay, so let me help you a little bit.

2 THE COURT: Ms. Dow, I'm --

3 MS. DOW: I'm actually referring --

4 THE COURT: Ms. Dow, I'm going to stop you.

5 MS. DOW: -- I'm actually referring --

6 THE COURT: Ms. Dow, stop. I'm permitting you to  
7 examine with respect to documents that you didn't post last  
8 night for cross-examination. The witness is generally  
9 familiar with it. I'm trying to provide some leeway. So  
10 don't expect him to be able to pull numbers from a document  
11 that you have not put in front of the witness for cross-  
12 examination. Go ahead with your questions.

13 MS. DOW: Sure. May I try to state this way, and  
14 this is my first time ever doing this. I apologize, Your  
15 Honor. So, it appears to me in the chart that there is a  
16 hash rate number of 307, sizing the entire Bitcoin network,  
17 that your comparing this production to. So the 307 exa hash  
18 per second, are you familiar with what that correlating  
19 number in reality today is?

20 MR. FERRARO: I don't have it off the top --

21 MS. DOW: The size of the Bitcoin venture.

22 MR. FERRARO: I don't have it off the top of my  
23 head, but the launch -- that change, it goes up and down.  
24 You know, so it is a volatile kind of metric that you're  
25 trying to compare to. But I think it's generally off -- I

1 think it was -- off of memory I have, like, a 270 in my mind  
2 or something like that. So I think it's pretty consistent.

3 MS. DOW: Would it surprise you to know that it's  
4 481 today and it's been in the 400s in the latter part of  
5 the month of September? Would that surprise you?

6 MR. FERRARO: It's volatile, it moves up and down,  
7 you know.

8 MS. DOW: Sure.

9 MR. FERRARO: The launch point, you can't -- with  
10 this type of asset it's very hard to kind of true up the  
11 launch point at all points, 'cause it moves so much.

12 MS. DOW: Sure. But, so a plan, would you say that  
13 you're comfortable with a plan that states a starting year  
14 period, end-of-period value, in, as being 30 percent lower  
15 than what reality is? And so that kind of difficulty rating  
16 -- so, so when hash rate is high, once --

17 THE COURT: Ms. Dow, you're saying what reality  
18 is. Reality would be evidence. It's not before the witness,  
19 it's an improper question.

20 MS. DOW: Okay. I'm sorry. So, if the plan -- if  
21 in fact the plan is 30 percent off of what current  
22 difficulty is, do you feel that there are enough resources  
23 in the plan to make up the difference to maintain the  
24 revenue you're projecting?

25 MR. FERRARO: Yeah, I think it's quite volatile,

1 the hash rate, it moves back and forth. I think the key  
2 assumption is kind of what happens around [indiscernible]

3 MS. DOW: [indiscernible]

4 MR. FERRARO: Well, I mean, that's, that's  
5 occurring in 2024, it's right around the corner, and that's  
6 going to impact your 5-year projection. So --

7 MS. DOW: Sure. And how are you seeing that rate  
8 to -- be impacted by having [indiscernible] and what does  
9 that mean for resources needing to be applied by the, the  
10 NewCo? To maintain revenue.

11 MR. FERRARO: As the rewards get cut in half, you  
12 would expect people with less efficient rigs and maybe less  
13 desirable power markets would have to shut off and curtail.  
14 Now, this is why it's volatile. They can turn back on at any  
15 point in time. If Bitcoin prices rise, energy prices fall,  
16 or the network shrinks, these coins or the machines can be  
17 turned right back on. And that's why it's so volatile and  
18 elastic.

19 THE COURT: Let's wrap up the questions, Ms. Dow.

20 MS. DOW: Sure. Last cycle -- so you're talking  
21 about the beginning of a new cycle we're coming into. Last  
22 cycle, what was the range of hash rate? What was the, the  
23 variance from the low to the high?

24 MR. FERRARO: I don't know that information, I  
25 don't have it in front of me. I apologize.



1 MS. DOW: Okay. All right. So you're not -- are  
2 you familiar with it went from 100 to 400, does that seem  
3 similar to the assumptions that drove into your plan?

4 THE COURT: I'm going to object to that and  
5 sustain the objection. Wrap up your questioning, please.

6 MS. DOW: How did you anticipate remaining  
7 profitable if, by chance, the plan starting point is  
8 significantly off to the low side from what it really takes  
9 to mine in this current competitive environment?

10 MR. FERRARO: Yeah, it's a great question. Thank  
11 you for that. I think it's important to note that this  
12 business has a lot of intrinsic defensive capabilities. So  
13 you talk about profitability and you talk about losses. The  
14 ability to curtail, to economically curtail when the  
15 marginal cost is higher than marginal revenue is something  
16 that is decided on a minute-by-minute basis. I think it's 5-  
17 minute intervals. This greatly reduces the risk of loss if  
18 managed appropriately.

19 So I think, you know, it comes down to having a  
20 lean operational kind of shop, in which you're going to eat  
21 some operational expenses when your machines are shut off,  
22 but it's important to note that you do have that natural  
23 kind of defensive mechanism in this business.

24 THE COURT: Last question, Ms. Dow.

25 MS. DOW: So can I --

1 THE COURT: Ms. Dow --

2 MS. DOW: Sure.

3 THE COURT: -- one, one more question.

4 MS. DOW: Yes, so to, to follow up on that,  
5 Mr. Ferraro, that curtailment strategy, how often has it,  
6 and do you see the curtailment which impacts your variable  
7 cost, how do -- how often do you see that covering and  
8 making up for, and covering the fixed cost portion in the  
9 operation?

10 MR. FERRARO: Yes, great question. We experience  
11 this quite a bit in West Texas over the summer. The heat  
12 index was off the charts, the power spikes were dramatic.  
13 And because of that, we economic curtailed a significant  
14 portion of the time. And that's one of the driving reasons  
15 why the EBITDA was so high over the summer months, almost  
16 \$10 million.

17 THE COURT: All right. Anybody else wish to cross-  
18 examine?

19 MS. DOW: Thank you, Your Honor.

20 THE CLERK: I don't see any hands, Judge.

21 THE COURT: All right. I have a few questions for  
22 Mr. Ferraro. So I'm looking at Exhibit 37, which was your  
23 Declaration in Support of CEL Token Settlement. And among  
24 the things attached to it was what's described as Exhibit A,  
25 the White Paper. Just tell me what that was and why it was

1 prepared.

2 MR. FERRARO: Yeah, I'll do my best. I think the  
3 White Paper was prepared right before the ICO, which I think  
4 was around circa 2018. And this White Paper effectively  
5 describes how the CEL Token will be issued, what its value  
6 and contributions are, and kind of, you know, you know, the  
7 utility components of it.

8 THE COURT: All right, so your, your Declaration  
9 and the Disclosure Statement describe this as the CEL as a  
10 utility token. Can you explain what that means, as a utility  
11 token?

12 MR. FERRARO: Yeah, you can -- I think there's  
13 three key components to it. Let's see if I can remember all  
14 three after a couple hours of testimony. One is kind of --

15 THE COURT: Time to finish this up.

16 MR. FERRARO: I know. Discounted loan rates, you  
17 can pay your loan with it. The other one is enhanced --

18 THE COURT: Higher interest rate on deposits.

19 MR. FERRARO: Higher on, on deposits and the third  
20 piece was --

21 THE COURT: Lower interest rate on loans.

22 MR. FERRARO: Lower interest rates, and the third  
23 piece is product and services.

24 THE COURT: Reduced transaction fees.

25 MR. FERRARO: Yep.

1 THE COURT: Could the CEL Token be used to pay for  
2 goods or services within the Celsius network ecosystem?

3 MR. FERRARO: You could trade it in for other  
4 currencies, and you could pay that --

5 THE COURT: Through the Celsius Network.

6 MR. FERRARO: Through the Celsius Network.

7 THE COURT: So the platform shut down, and the  
8 plan doesn't resume it, correct?

9 MR. FERRARO: That's correct.

10 THE COURT: All right. So do utility tokens have  
11 any value if the platform on which they're used ceases to  
12 function?

13 MR. FERRARO: I personally do not believe so,  
14 outside of being speculative meme coin.

15 THE COURT: So whenever market trading, you would  
16 consider that to mean speculative trading.

17 MR. FERRARO: That's what I - yes. Correct.

18 THE COURT: Perhaps subject to the manipulation  
19 that happened before between around the pause date.

20 MR. FERRARO: And the disconnects in the  
21 marketplace, and all the locked tokens, yes.

22 THE COURT: I don't have any other questions. Do  
23 you have any more? You know what, we're going to take a  
24 break, but we will finish with the witness.

25 MR. BROWN: Nothing further, no, Your Honor.

1 THE COURT: Committee?

2 MR. COLODNY: I have one, Your Honor. Mr. Ferraro,  
3 you answered a number of questions about exculpation  
4 regarding the distributions. Is it your understanding that  
5 the exculpations in the plan only apply to the  
6 distributions?

7 MR. FERRARO: My understanding is the exculpations  
8 for the distribution part -- are you asking specifically --

9 MR. COLODNY: No, the exculpation as a whole for  
10 the Debtors, for the Committee, for the Committee Advisors.

11 MR. FERRARO: It's broader than just the  
12 distribution, correct.

13 MR. COLODNY: It covers all actions between the  
14 petition date to the effective date.

15 MR. FERRARO: Throughout the bankruptcy, yes.

16 MR. COLODNY: No further questions, your Honor.

17 THE COURT: Thank you. Ms. Cornell?

18 MS. CORNELL: Nothing further, Your Honor.

19 THE COURT: You're excused.

20 MR. FERRARO: Thank you.

21 THE COURT: Thank you for your testimony. What's  
22 next?

23 MR. BROWN: Your Honor, we're next going to call  
24 Mr. Kokinos to the stand. Maybe probably a good time for  
25 morning break.

1 THE COURT: It is.

2 MR. BROWN: We can --

3 THE COURT: It is.

4 MR. BROWN: -- shift around if necessary.

5 THE COURT: Sure. Let's take a break until noon.

6 And do you have an idea about how long you're going to be  
7 with Mr. Kokinos?

8 MR. BROWN: I'll defer to Mr. McCarrick.

9 MR. MCCARRICK: T.J. McCarrick, Kirkland & Ellis,  
10 on behalf of the Debtors. I don't expect at least the direct  
11 examination to go more than 10 minutes.

12 THE COURT: Okay. All right, let's take a break  
13 until noon and we'll resume at noon. Thank you very much,  
14 everyone. Please be seated.

15 MR. MCCARRICK: T.J. McCarrick, Kirkland & Ellis,  
16 on behalf of the Debtors. We call Steven Kokinos to the  
17 stand.

18 THE COURT: Okay.

19 MR. MCCARRICK: And, Your Honor, like my partner,  
20 I have some witness binders that I can hand up to the bench,  
21 the witness and the clerks in turn.

22 THE CLERK: Do you solemnly swear and affirm all  
23 the testimony you're about to give before this Court is the  
24 truth and the whole truth?

25 MR. KOKINOS: I do.

1 THE COURT: Thank you. Please have a seat. And  
2 there are cups and there is water there, if you --

3 MR. KOKINOS: Thank you.

4 THE COURT: Please go ahead.

5 MR. MCCARRICK: Good afternoon, Mr. Kokinos. Could  
6 you introduce yourself?

7 MR. KOKINOS: I'm Steven Kokinos, and I'm the  
8 proposed CEO of NewCo.

9 MR. MCCARRICK: What do you do for a living,  
10 Mr. Kokinos?

11 MR. KOKINOS: I'm a tech investor. But I's say  
12 principally I've spent the majority of my life building tech  
13 companies, starting with internet infrastructure, software,  
14 telecommunications and crypto most recently.

15 MR. MCCARRICK: How did you become involved in  
16 these Chapter 11 cases?

17 MR. KOKINOS: I was introduced to Celsius by Mike  
18 Arrington, who runs Arrington Capital. He's one of the  
19 Fahrenheit principals and he brought a group of us together  
20 to take a look at the opportunity.

21 MR. MCCARRICK: When you say 'Fahrenheit,' what is  
22 the Fahrenheit Group?

23 MR. KOKINOS: Fahrenheit Group is a team of five  
24 principals, a US Bitcoin Proof Group, or US Bitcoin of which  
25 Asher Genoot is a founder and involved personally here.

1 Proof Group, which is run by Noah Jessop, is a staking  
2 service, or staking service provider and venture capitol.  
3 Ravi Kaza, who is a risk management expert and has a lot of  
4 experience in both managing both public and private hedge  
5 funds, along with myself.

6 MR. MCCARRICK: And is Arrington the fifth?

7 MR. KOKINOS: I'm sorry, yes. I'm sorry. And last  
8 but not least, Arrington Capital, which is founded and run  
9 by Mike Arrington, is a longtime investor in the tech space  
10 and crypto space.

11 MR. MCCARRICK: Mr. Kokinos, are you generally  
12 familiar with the sales and auction process for the Debtors'  
13 assets?

14 MR. KOKINOS: Yes, I am.

15 MR. MCCARRICK: How would you describe that  
16 process based on your participation in it?

17 MR. KOKINOS: Well, it was a very competitive  
18 process. It went much longer than we anticipated it might.  
19 You know, but I think from our standpoint, you know, it  
20 yielded, you know, a much better deal for the creditors  
21 than, than the stalking horse bid was, certainly.

22 MR. MCCARRICK: What is Fahrenheit's role in  
23 restructuring the Debtors today?

24 MR. KOKINOS: Fahrenheit will be the manager of  
25 the new entity and providing, you know, much of the



1 executive team. And is also in particular responsible for  
2 managing the three core business lines. One being Bitcoin  
3 mining, the second being staking, especially self-staking  
4 Ethereum, and the third is managing a portfolio of illiquid  
5 venture investments and other assets.

6 MR. MCCARRICK: You refer to the management team  
7 of NewCo. Who is that management team or the anticipated  
8 management team?

9 MR. KOKINOS: Today the confirmed members of  
10 Fahrenheit that will be involved in NewCo full time are  
11 myself as CEO, Joel Block, who's in the audience, will be  
12 the CFO, and then Ravi Kaza will be on the Board as well as  
13 Asher Genoot. And US Bitcoin as a firm will also be  
14 responsible for managing Bitcoin mining and has a separate  
15 management agreement specific to those services they'll be  
16 providing.

17 MR. MCCARRICK: Is Fahrenheit committed to making  
18 any investments in NewCo?

19 MR. KOKINOS: Yes, the Fahrenheit members have  
20 committed up to \$50 million of our own money to go into  
21 NewCo and purchasing that at net asset value at the time of  
22 emergence.

23 MR. MCCARRICK: What, if anything, does that  
24 investment say about Fahrenheit's incentives to make NewCo  
25 successful on a going-forward basis?

1 MR. KOKINOS: You know, we think that us owning  
2 equity is important because it -- the creditors will be the  
3 majority owners of this new business. And it incents us in  
4 the same way that the creditors are incented, i.e., the  
5 lines are incentives to grow the business and grow  
6 enterprise value.

7 THE COURT: You said that Fahrenheit will invest  
8 up to 50 million. How and when will the precise amount be  
9 determined?

10 MR. KOKINOS: So approximately 30 million will go  
11 in at emergence, and then the Board will have two one-year  
12 options in year four and year five to extend the deal.  
13 Should they choose to, approximately another 10 million is  
14 committed to be invested in those years, should they elect  
15 to continue the agreement. If they terminate the agreement  
16 at the end of three years, then those additional investments  
17 wouldn't happen.

18 MR. MCCARRICK: You testified earlier about  
19 NewCo's primary business lines. Could you remind the Court  
20 what those are?

21 MR. KOKINOS: Yes, I think I mentioned a little  
22 bit earlier, but just to reiterate. Bitcoin mining will be  
23 the largest business line at emergence. The second is  
24 Ethereum staking, and obviously we'll need the Board to  
25 approve the business plan, but we think that we're likely to

1 want to stake a portion of the Ethereum, so that we can earn  
2 yield. One of the points I think that's important on the  
3 Ethereum side is that Proof Group is contributing  
4 intellectual property into NewCo that will enhance the  
5 ability to get -- obtain higher yields on Ethereum staking  
6 than would be possible by someone doing it themselves. So  
7 that, we think, is a key, a key point.

8 And then the third, you know, there are many  
9 different kind of illiquid assets that are on the balance  
10 sheet. The Arrington team in particular is very skilled at  
11 managing those and looking at ways to both get them  
12 ultimately liquid, but also be able to, you know, manage the  
13 value of those assets.

14 THE COURT: What's the approximate value of  
15 Ethereum that's being seeded into NewCo?

16 MR. KOKINOS: So it's approximately 450 million  
17 with one modifier. I know the Cedarvale deal is being  
18 discussed here. If the Cedarvale deal does happen, then I  
19 believe it would be reduced to approximately 420 million.

20 MR. MCCARRICK: Turning to the mining business  
21 which you were just discussing a little bit, what steps is  
22 Fahrenheit taking to set the NewCo mining business up for  
23 success, or what's the business case for mining on a go-  
24 forward basis?

25 MR. KOKINOS: Sure. I mean, I think this is an

1 important one. I think one of the things that excites us  
2 about US Bitcoin as a partner is that, you know, their focus  
3 has really been on vertical integration. Owning property,  
4 being able to build that infrastructure, that we -- that  
5 NewCo will ultimately own, and then enable us to be more  
6 efficient than, you know, others in a competitive situation.  
7 Which mining is. And so if you look at, you know, whether  
8 it's a property like Cedarvale or potentially other  
9 opportunities, should the Board, you know, be open to  
10 further investments, we think that US Bitcoin is  
11 particularly well situated to help us both build out those -  
12 - that new infrastructure, but also manage it in a very  
13 efficient way. And I think our belief is that moving away  
14 from third-party hosted contracts as quickly as possible  
15 will yield economic benefit to NewCo.

16 MR. MCCARRICK: All right, Mr. Kokinos, can you  
17 open the binder in front of you at Celsius Exhibit 61.

18 MR. KOKINOS: Exhibit 61

19 THE COURT: Is it his Declaration?

20 MR. KOKINOS: Yes.

21 MR. MCCARRICK: Yes. Celsius Exhibit 61 is a copy  
22 of Mr. Kokinos' Declaration, which is filed at Docket Number  
23 3591. Is that a true and accurate copy of your Declaration,  
24 sir?

25 MR. KOKINOS: yes, it is.

1 MR. MCCARRICK: Do you adopt the statements in  
2 your Declaration as your testimony under oath here today?

3 MR. KOKINOS: I do.

4 MR. MCCARRICK: All right, this next exhibit I'd  
5 like to -- the Debtors offer Exhibit Celsius Exhibit 61 into  
6 evidence.

7 THE COURT: Any objections? Exhibit 61 is admitted  
8 into evidence.

9 (Debtors' Exhibit 61 Received into Evidence)

10 MR. MCCARRICK: All right, I'd like to now turn to  
11 Exhibit 3 in your binder.

12 MR. KOKINOS: Okay.

13 MR. MCCARRICK: Celsius Exhibit 3 is the Debtors'  
14 Disclosure Statement filed at Docket 2902.

15 MR. KOKINOS: Okay.

16 MR. MCCARRICK: And this is an excerpt of that  
17 Disclosure Statement, Pages 296 to 324 of the Disclosure  
18 Stmt. What are Pages 296 to 394 of Celsius Exhibit 3?

19 MR. KOKINOS: I just wanna make sure --

20 THE COURT: The copy says to 332.

21 MR. MCCARRICK: 332.

22 MR. KOKINOS: I have Page 301 to 332, is what it  
23 shows on mine, is that right?

24 THE COURT: I have 296 to 332.

25 MR. MCCARRICK: One second.

1 MR. KOKINOS: Oh, I apologize. There we are. You  
2 guys are right, I missed the cover pages. 296 to 332, yes.

3 MR. MCCARRICK: 296 to 332?

4 MR. KOKINOS: You got it.

5 MR. MCCARRICK: Okay. What are Pages 296 to 332 of  
6 Celsius Exhibit 3?

7 MR. KOKINOS: This is a presentation that we  
8 provided outlining some of the highlights of Fahrenheit's  
9 approach to NewCo.

10 MR. MCCARRICK: Is it a fair description and  
11 summary of the highlights of Fahrenheit's approach?

12 MR. KOKINOS: Yes.

13 MR. MCCARRICK: And do you stand by --

14 MR. KOKINOS: Yes.

15 MR. MCCARRICK: -- that business plan?

16 MR. KOKINOS: Yeah, we do.

17 MR. MCCARRICK: Your Honor, at this time we admit  
18 that excerpt of Exhibit 3 into evidence.

19 THE COURT: Any objections to the Court admitting  
20 in evidence Celsius Exhibit 3? All right, it's admitted into  
21 evidence.

22 (Celsius Exhibit 3 Received into Evidence)

23 MR. MCCARRICK: Okay. Your Honor, I have nothing  
24 further for this witness, happy to pass.

25 THE COURT: Thank you. All right, cross-

1 examination. First does Committee wish to examine?

2 MR. COLODNY: No.

3 THE COURT: US Trustee?

4 MS. CORNELL: Just one question, Your Honor.

5 THE COURT: Go ahead, Ms. Cornell.

6 MS. CORNELL: Good morning, Your Honor.

7 THE COURT: I've rarely heard somebody say they  
8 only have one question and then stick by it.

9 MS. CORNELL: I only have one, I swear it, one.

10 MR. KOKINOS: Morning.

11 MS. CORNELL: Shara Cornell, I'm here for the  
12 Office of the United States Trustee. I just wanted to ask  
13 one clarifying question from your testimony earlier. You  
14 indicated that a \$30 million, \$30 million would be paid into  
15 NewCo upon emergence. Could you just explain a little bit  
16 better for the record what emergence means to you?

17 MR. KOKINOS: Sure. You know, I guess upon the  
18 plan effective date is what I should've chosen for words.

19 MS. CORNELL: Thank you. That's all I have, Your  
20 Honor.

21 THE COURT: Congratulations. All right. Any other  
22 cross-examination of Mr. Kokinos?

23 MR. DIXON: Yes, Your Honor.

24 THE COURT: Mr. Dixon, I see you on the screen.  
25 You wish to examine?

1 MR. DIXON: Yes, hello, hello, Mr. Kokinos.

2 MR. KOKINOS: [indiscernible]

3 MR. DIXON: How are you doing. If you've -- I  
4 didn't see in the Disclosure Statement any disclosure on who  
5 the ultimate beneficial owners of Fahrenheit are. Would you  
6 mind sharing the relative UBOs for Fahrenheit?

7 MR. KOKINOS: Of who the ultimate beneficial  
8 owners of Fahrenheit are?

9 MR. DIXON: Yeah, and, like, the relative  
10 percentages, and, like, the makeup of the shareholding.

11 MR. KOKINOS: Sure. The five partners that I --  
12 five principals that I mentioned before are the beneficial  
13 owners. Arrington Capital, US Bitcoin, or I believe it's a  
14 designee from US Bitcoin, Sonic Boom Capital, which is my  
15 family office, Ravi Kaza in his individual capacity in Proof  
16 Group.

17 MR. DIXON: And are they --

18 THE COURT: Excuse me. He also asked about the  
19 relative percentage of each -- ownership of each of those  
20 five.

21 MR. KOKINOS: Yeah, I don't know the exact  
22 percentages, but US Bitcoin and Arrington Capital are  
23 larger, the two larger investors. And then the other three  
24 are somewhat smaller.

25 MR. DIXON: Excellent. And could you help us --



1 could you tell us what the source of funds are for the 30  
2 million, where are the funds coming from?

3 MR. KOKINOS: Sure. Well, you know, I can't speak  
4 for the others, I can speak for myself. It's coming from,  
5 you know, personal family money that's going in. But it is  
6 our money and for the other investors it's, you know, funds  
7 coming from their funds or themselves.

8 MR. DIXON: Okay. So this is an external capital  
9 from [indiscernible] or is it all just the principals?

10 MR. KOKINOS: I don't, you know, I'm not aware of  
11 what the specifics of how Proof Group is investing. You  
12 know, so I can only speak for myself. The others are  
13 investing through their funds.

14 MR. DIXON: Okay. And then, do we know the breakup  
15 of, like, the 33 million, like, relative? Is it, is, like,  
16 the larger percentage coming from US Bitcoin or Michael  
17 Arrington?

18 MR. KOKINOS: Yeah, I believe I already answered  
19 that.

20 THE COURT: Answer it again.

21 MR. KOKINOS: Okay. US Bitcoin and Arrington  
22 Capital are the largest investors of the group, and the  
23 remaining three are somewhat smaller. But it's not the case  
24 that if there's any, you know, disproportionate.

25 MR. DIXON: Okay. Do you -- are you aware of

1 anything that would prevent NewCo being able to invest in  
2 Fahrenheit if it ever wanted additional capital so that  
3 NewCo and Fahrenheit could align interests, given it's going  
4 to be the manager?

5 MR. KOKINOS: I'm not sure I really -- maybe you  
6 could restate. I don't completely understand what you're --

7 MR. DIXON: Yeah, sure. Because, you know,  
8 Fahrenheit is going to be the beneficial of most of the  
9 management contracts, are you aware of anything, like, where  
10 NewCo might be able to invest in Fahrenheit, to become an  
11 equity holder in Fahrenheit so that they would have complete  
12 alignment of interests?

13 THE COURT: Let me ask this question. Are there  
14 any restrictions on NewCo investing in Fahrenheit?

15 MR. KOKINOS: Not that I'm aware.

16 THE COURT: Okay, ask your next question.

17 MR. DIXON: That's all. Thank you, Your Honor.  
18 Thank you, Mr. Kokinos.

19 THE COURT: All right, anybody else wish to cross-  
20 examine?

21 MR. SHEIK: Yes, Your Honor.

22 THE COURT: Mr. Sheik, go ahead.

23 MR. SHEIK: Okay. So, Mr. Kokinos, I wanted to  
24 ask, was there a reason why you guys decided to increase the  
25 number of Board Committee members from seven to nine?

1 MR. KOKINOS: Well, we -- this wasn't a decision  
2 that we made. We had discussions with the Committee just to  
3 --

4 THE COURT: With the Creditors Committee?

5 MR. KOKINOS: With the Creditors Committee around  
6 Board composition. The original Board composition was a  
7 seven-person board, of which we would have two seats and  
8 consent rights over two additional seats. The Committee  
9 approached us about the possibility of increasing the Board  
10 size from seven to nine, where we would get three seats and  
11 maintain consent rights over two of the seats as we had had  
12 previously. We didn't have any objection to that, and so,  
13 you know, that's where that went.

14 MR. SHEIK: Is it correct that during the two  
15 Spaces that you guys held via Zoom and on Twitter Spaces,  
16 with the creditors, you had mentioned -- well, not  
17 specifically you, but, you know, Fahrenheit had mentioned  
18 that there would be -- that the creditors would be able to  
19 sit on this Board and have maximum representation. Is that  
20 correct?

21 MR. KOKINOS: I don't have the recording of that,  
22 but my recollection is somewhat different. I believe what we  
23 -- my recollection was from Spaces, was that the creditors  
24 would be the majority shareholders of this new business, and  
25 would also have the majority of seats on the Board. And as a

1 result, would have, you know, by nature, you know, a control  
2 position over what goes on in the new company?

3 MR. SHIEK: So then, if that is the case, then  
4 why would there be a change in courts with, you know, an  
5 increase from seven to nine and zero representation of  
6 committee members to the board other than having observer  
7 spots. That was a bit of a surprise to us.

8 MR. KOKINOS: I wasn't, so first of all, you  
9 know, the selection of the board wasn't our, you know, we  
10 were not the ones constructing the board. It was the  
11 committee so I think it's worth being clear there. And to  
12 our, you know, to my knowledge there are two UCC members who  
13 are on the board and that there also board observers that  
14 are creditors as well.

15 MR. SHIEK: Okay. And when it came to the  
16 selection of notable, you know, members of this committee,  
17 Emanuel Idu [ph] and Ms. La Palma [ph], I believe that's her  
18 last name. Was that a decision that was made by Fahrenheit?

19 MR. KOKINOS: As, you know, I stated previously,  
20 the committee as the right to select their board members. We  
21 had consent rights over two of those seats. Irrespective of  
22 that, the committee presented the names of their candidates  
23 to us, Fahrenheit members both spoke with them and reviewed  
24 their backgrounds and CVs. And we had no objections to the  
25 members who were chosen to the board.

1 MR. SHIEK: So there was not a selection by  
2 Fahrenheit?

3 MR. KOKINOS: No.

4 MR. SHIEK: Okay.

5 MR. KOKINOS: Other than --

6 MR. SHIEK: Who were the two selected by --

7 THE COURT: Hold on. Hold on.

8 MR. SHIEK: Sorry, go ahead.

9 MR. KOKINOS: I was just going to say --

10 THE COURT: Go ahead.

11 MR. KOKINOS: -- to be perfectly clear, other  
12 than to the extent that for the two seats that we had  
13 consent rights to, but we did not object to those seats.

14 THE COURT: Go ahead, Mr. Shiek.

15 MR. SHIEK: Thank you. So when it came to the  
16 selection, the last minute change of, let's say, Mr.  
17 Arrington bowing out of the selection committee, I'm sorry,  
18 the board, was there a reason why that, you know, that  
19 change was made in the last minute?

20 MR. KOKINOS: Mike Arrington had, you know,  
21 personal thoughts on the composition of the board.  
22 Fahrenheit, as a group, is comfortable with the composition  
23 of the board and board observers and felt, you know, it was  
24 best to appoint Robbie as a new board member as Mr.  
25 Arrington wasn't comfortable.

1 MR. SHIEK: Okay. Now when it comes to the  
2 composition of the board, I had asked a previous question to  
3 Mr. Ferraro, which I'll ask you as well. When it comes to  
4 the true revenue streams which are basically the mining  
5 company and the staked Eth, I believe Mr. Asher Genoot has  
6 been brought onto the board as the representative from  
7 USBTC, is that correct?

8 MR. KOKINOS: Yes, that's right. Asher will be  
9 one of the board members.

10 MR. SHIEK: Great. Now Asher is currently in a  
11 position where he is both, or at least in three positions,  
12 he's the CEO of US Bitcoin, he's the CEO of Hut 8, he's also  
13 in the middle of a merger, and he's also responsible for  
14 managing this mining company for NewCo. Do you think that  
15 that is a bit of a large undertaking as in he may be spread  
16 a little too thin?

17 THE COURT: Mr. Shiek --

18 MR. KOKINOS: [indiscernible]

19 THE COURT: Hold on. Mr. Shiek included various  
20 assumptions that are in evidence before the court. Do you  
21 know those to be true?

22 MR. KOKINOS: No.

23 MR. SHIEK: Yes, Your Honor, I do.

24 THE COURT: I'm sorry, your --

25 MR. SHIEK: Oh, I'm sorry.

1 THE COURT: -- your objection is sustained to  
2 your question.

3 MR. SHIEK: Okay, no worries. Thank you. I'll  
4 proceed then. So when it comes to, you know, the makeup of  
5 this board, it seems like NewCo is largely, well this plan  
6 sponsor will largely be, you know, responsible for  
7 overseeing the mining company since staked Eth is kind of  
8 set to autopilot. So why add more members to the board when,  
9 you know, the bulk of the responsibility will lie on USBTC  
10 and Asher Genoot as CEO.

11 UNIDENTIFIED SPEAKER #1: Objection.

12 THE COURT: Objection sustained.

13 MR. SHIEK: Okay. Your Honor, I think that's  
14 all I have.

15 THE COURT: All right. Thank you --

16 MR. SHIEK: I appreciate it, thank you.

17

18 THE COURT: Thank you very much, Mr. Shiek.  
19 Anybody else have any questions?

20 MR. PHILLIPS: Yes, Your Honor.

21 THE COURT: Mr. Phillips?

22 MR. PHILLIPS: Thank you, Your Honor. Mr. Kokinos,  
23 I wanted to go back to the issue of Fahrenheit's overall  
24 investment in NewCo. What the portion of the 50 and of the  
25 33 million are you responsible for?

1 MR. KOKINOS: Approximately 6 million.

2 MR. PHILLIPS: Thank you. Is that of the 50 or of  
3 the 33?

4 MR. KOKINOS: I honestly, I can't recall right  
5 now because the numbers have moved around. But I believe out  
6 of the 30.

7 MR. PHILLIPS: You think of the 33? I'm sorry, I  
8 didn't hear.

9 MR. KOKINOS: Yeah, I believe of the 33.

10 MR. PHILLIPS: Can you help us understand why that  
11 being upfront was reduced from 50 million to 33 as opposed  
12 to, you know, structuring it maybe with all 50 up front and  
13 then giving back the 33 if you exit off [indiscernible]?

14 MR. KOKINOS: Our understanding coming out of the  
15 option was that there was a five year deal and that that's  
16 what we were contributing into. You know, subsequent  
17 discussions that were productive with the committee and the  
18 debtors suggested that the committee would like to have, to  
19 turn years four and five into their option rather than a  
20 commitment to have us manage the company for those five  
21 years. And pursuant to those discussions we arrived at a  
22 different formula.

23 MR. PHILLIPS: And why, do you think that the  
24 structure using a termination fee as opposed to an increase  
25 fee for the additional year would have been beneficial to



1 the NewCo shareholder?

2 MR. KOKINOS: This was all of the structure that  
3 all the parties felt comfortable with and agreed to.

4 MR. PHILLIPS: Okay. All right. In your  
5 declaration, in paragraph 14, you talk about the NewCo  
6 mining [indiscernible] and Exhibit E to the disclosure  
7 statement, so that Exhibit E to the disclosure statement,  
8 which I believe are incorporated into three of the debtors.  
9 And I also, Your Honor, did submit some exhibits for cross  
10 exam which, albeit, past the 5:00 p.m. deadline because,  
11 like that caught me by surprise yesterday. But if I could  
12 refer you to --

13 MR. KOKINOS: I'm not sure which exhibit or page  
14 you're looking at.

15 THE COURT: If you'll hold on Mr. Phillips --

16 MR. PHILLIPS: Well --

17 THE COURT: -- Mr. McCarrick is going to bring  
18 him the position exhibits. Okay? Just hold on.

19 MR. PHILLIPS: Sure. I'd like to start with  
20 Exhibit E if that's possible.

21 MR. MCCARRICK: Mr. Phillips, for the record, are  
22 these the excerpts that you submitted on the docket last  
23 night? That's the filing that I gave him.

24 MR. PHILLIPS: Yes, they are. I believe that  
25 they're also contained, Mr. McCarrick, within your exhibits

1 as well.

2 MR. KOKINOS: So this is from Exhibit E of  
3 disclosure statement and there's a chart, that's what you're  
4 looking at?

5 MR. PHILLIPS: Correct.

6 MR. KOKINOS: Okay.

7 MR. PHILLIPS: That is the one I'd like to start  
8 with. Thank you.

9 Mr. MCCARRICK: [indiscernible]

10 MR. KOKINOS: Thank you.

11 THE COURT: What's the question?

12 MR. PHILLIPS: Okay, so are you responsible or is  
13 the Fahrenheit team responsible for this exhibit?

14 THE COURT: You're referring to Exhibit E of  
15 the disclosure statement?

16 MR. PHILLIPS: Correct.

17 MR. KOKINOS: I believe, I just need to  
18 understand where this chart came from. Is this the debtors'  
19 financial projections in the disclosure statements? Okay. So  
20 what I would say is no, we were not responsible for these.  
21 However, Fahrenheit did provide input into certain aspects  
22 of this principally around the network hash rate assumptions  
23 and BTC price over time.

24 MR. PHILLIPS: Okay, so let's focus on those two  
25 elements. So you said Fahrenheit did provide input into the

1 network hash rate, again, which starts at 307, September  
2 '24. Correct?

3 MR. KOKINOS: Mm-hmm.

4 THE COURT: You have to answer yes or no.

5 MR. KOKINOS: I'm sorry, yes.

6 MR. PHILLIPS: Do you know what the actual hash  
7 rate in September of 2024 was?

8 MR. KOKINOS: I know what the hash rate is today,  
9 I do not know what it was in September '24.

10 MR. PHILLIPS: What is it today?

11 MR. KOKINOS: Approximately 480.

12 MR. PHILLIPS: Okay, so if the hash rate is  
13 approximately 480, which if I look here is not going to  
th

14 exceed again until September 26 , what does that imply as to  
15 the profitability and cash flow you've dealt with netcap,  
16 CapEx that are shown on this chart?

17 MR. KOKINOS: Well, first of all, I don't have  
18 the details of this financial projection so it's hard for me  
19 to speculate on, you know, what that would, you know, how it  
20 would change the numbers. I think it's impossible for me to  
21 say in isolation, you know, what impact that would have  
22 without, you know, having a spreadsheet and deeper data  
23 here. And I wasn't a party --

24 MR. PHILLIPS: Would it be --

25 THE COURT: [indiscernible]

1 MR. KOKINOS: -- to the calculation.

2 MR. PHILLIPS: Would it be fair to say that the  
3 network share would drop from three and a half to a lower  
4 number more in accordance to about, you know, two and a  
5 half?

6 MR. KOKINOS: I mean, I think it is a fair  
7 assumption that if your hash rate, if the network hash rate  
8 is going up then, you know, you would have a smaller share  
9 of it. I agree. I think in reality it's likely not that  
10 simple, which is why, you know, I would need to defer to  
11 look at these. And again, I would just say that the specific  
12 calculations here were done by the debtor. We gave input as  
13 to the reasonableness on, you know, certain aspects here  
14 which, you know, we felt were reasonable at the time and  
15 stand by, you know, that. Obviously, you know, Bitcoin is a  
16 volatile asset and network hash rates are a volatile thing  
17 as well so they go up and they go down.

18 MR. PHILLIPS: So you think that now that hash  
19 rates are 60 percent higher, in actuality than has been  
20 illustrated on this chart, that this number is still  
21 feasible?

22 MR. KOKINOS: What was in my testimony --

23 MR. PHILLIPS: [indiscernible]

24 MR. KOKINOS: -- and what I am reiterating here,  
25 is that, you know, the numbers as presented with the

1 information that we had at the time, was reasonable and we  
2 stand behind that.

3 MR. PHILLIPS: And you agree that if the network  
4 hash rate is substantially higher than was illustrated here,  
5 the profitability would be lower? Not saying a particular  
6 number but that it would actually be lower for sure.

7 MR. KOKINOS: I'm not sure I agree with that part  
8 of your statement. I think we, you know, as all things in  
9 business and forecasting, you know, you have to look at the  
10 totality of it. I don't have the levers in front of me to  
11 understand, you know, how that might change or what other  
12 decisions might go along with, you know, changes in a  
13 dynamic environment. I think that's part of capital  
14 allocation and risk management and those are the sorts of  
15 things that we would look at. But I think the assertion  
16 you're trying to make is that we would just leave the  
17 business alone in the face of changing dynamics and I don't,  
18 you know, I'm not suggesting that's true. That's something  
19 we'll work with the board on to determine kind of the  
20 appropriate course forward. And, again, the numbers that,  
21 you know, as presented and the projects at the time, they  
22 were reasonable and we stand behind that.

23 MR. PHILLIPS: Okay, I understand you had reason  
24 with this at the time presented but would you agree that as  
25 your percentage of network hash rate goes down that the

1 revenue holding Bitcoin plays constant that your revenues  
2 would go down?

3 MR. KOKINOS: I'm not sure I agree with that  
4 because you have other variables such as price and, you  
5 know, other elements that --

6 MR. PHILLIPS: I said when Bitcoin price --

7 THE COURT: Don't interrupt. Mr. Phillips,  
8 don't interrupt the witness.

9 MR. PHILLIPS: Sorry.

10 THE COURT: Go ahead.

11 MR. KOKINOS: Yeah, what I was saying is, you  
12 know, you're taking one variable in isolation and in a  
13 complex business there are many different variables that  
14 could offset and you have to look at those things  
15 holistically.

16 MR. PHILLIPS: Okay, but assuming Bitcoin price is  
17 constant, if your share of the network hash rate decreases,  
18 would you agree that revenues decrease?

19 MR. KOKINOS: All things being equal, yes.

20 MR. PHILLIPS: Thank you. And if those revenues  
21 decrease, all other elements being equal, profitability and  
22 cash flow, also decrease.

23 MR. KOKINOS: What was the, could you repeat  
24 that?

25 MR. PHILLIPS: I was saying that if revenues

1 decrease, and all clear things being equal, that  
2 profitability and cash flow also decrease.

3 MR. KOKINOS: I mean, yes --

4 MR. PHILLIPS: Do you agree?

5 MR. KOKINOS: -- what you said makes logical  
6 sense. What I'm saying is as, you know, a business person  
7 and somebody's going to be running the business, we would  
8 not look at things in such a static way. We would, you know,  
9 look at what different elements of the business need to be  
10 adjusted as market conditions change.

11 MR. PHILLIPS: But in general, if hash rate,  
12 network hash rate increased, in order to be competitive and  
13 produce the same amount of profits that really you would  
14 incur to increase costs then.

15 MR. KOKINOS: Could you rephrase what you're  
16 saying? I'm trying to follow you here.

17 MR. PHILLIPS: Would you agree then, you know, you  
18 mentioned that as a business operator that you would make  
19 adjustments. And that if the operating conditions were such,  
20 your network hash rate was low, or your overall share of the  
21 network hash rate was lower, Bitcoin price was constant,  
22 let's assume that for now, that, you know, that the  
23 adjustments that you would have to make in order to maintain  
24 or exceed this level of profitability would then, or to  
25 achieve it. I don't know how you would. But maybe you have a

1 magic dial, but you would have to increase your --

2 THE COURT: You're rambling on with the  
3 question. And start the question again. Ask a quick, crisp  
4 question if you wish the witness to answer.

5 MR. PHILLIPS: In order to maintain --

6 THE COURT: You're not testifying, Mr.  
7 Phillips. Ask simple direct questions.

8 MR. PHILLIPS: Okay. Assuming Bitcoin price is  
9 constant, and the network hash rate is higher than  
10 illustrated here, in order to achieve the same level of  
11 revenue then, you would have to increase your direct cost in  
12 order to achieve that revenue level as one of your business  
13 operation adjustments.

14 MR. KOKINOS: I agree, that's one possibility.  
15 What I would say though is our focus, you know, in that, you  
16 know, if you look at a market which was going in that  
17 direction would be where are there efficiency improvements,  
18 you know, that could be employed to better manage the  
19 business. How do we drive cost out and/or, you know, are  
20 there, as an example, are there certain locations that are  
21 higher cost versus lower cost. You would turn of the higher  
22 cost locations and run the lower more optimized ones. So I  
23 hear what you're saying, I'm not sure that it follows  
24 logically the profitability would decline simple as a result  
25 of one of these numbers being held constant or going in a



1 different direction. And that's part of the nuance of, you  
2 know, managing a Bitcoin mining business. Is you have to  
3 look at all these variables together to come up with the  
4 right answer and, you know, that's what we will seek to do  
5 at NewCo with the board's consent.

6 MR. PHILLIPS: Okay. So knowing what you now know  
7 today about the network in its current state, do you believe  
8 these projections to still be accurate and conservative or -  
9 -

10 THE COURT: I don't know what accurate means.  
11 Projections can be reasonable, they could be not reasonable.  
12 Finish up your --

13 MR. PHILLIPS: Do you --

14 THE COURT: -- finish up your question, Mr.  
15 Phillips, let's go.

16 MR. PHILLIPS: Okay. Do you believe that these  
17 projections are reasonable?

18 MR. KOKINOS: I, you know, previously answered  
19 this.

20 THE COURT: Do you believe the projections are  
21 reasonable?

22 MR. KOKINOS: Yes.

23 THE COURT: Okay. One more question, Mr.  
24 Phillips.

25 MR. PHILLIPS: Okay. One moment, please, Your

1 Honor. So, as the previous question Mr. Sheik was mentioning  
2 about Asher Genoot being brought onto the board when the  
3 board was expanded from seven to nine. Why was Asher Genoot  
4 appointed to the Fahrenheit board?

5 MR. MCCARRICK: Asked and answered.

6 THE COURT: Sustained. You've asked your  
7 questions. Next person. Anybody else wish to cross examine?

8 THE CLERK: I don't see any additional hands  
9 raised, Judge.

10 THE COURT: All right, any redirect?

11 MR. MCCARRICK: No, Your Honor.

12 THE COURT: All right, you're excused. Thank  
13 you very much.

14 MR. KOKINOS: Thank you.

15 THE COURT: All right, we're going to take a  
16 lunch break. It is 12:38. We'll resume, who's  
17 [indiscernible]?

18 MR. MCCARRICK: The next witness would be Ryan  
19 Kielty.

20 THE COURT: Try it again.

21 MR. MCCARRICK: Ryan Kielty of Centerview.

22 THE COURT: Okay. 2:00. Everybody can leave  
23 things in the courtroom.

24 MR. MCCARRICK: Thank you, Your Honor.

25 (Whereupon the proceedings were paused at 12:38

1 for a lunch break.)

2 (Whereupon proceedings were resumed at 2:01 p.m.)

3 THE CLERK: All rise.

4 THE COURT: Please be seated. Mr. McCarrick.

5 MR. MCCARRICK: T.J. McCarrick, Kirkland and Ellis  
6 on behalf of the debtors. The debtors call Ryan Kielty to  
7 the stand.

8 THE COURT: You'll raise your right hand,  
9 you'll be sworn in.

10 UNIDENTIFIED SPEAKER: Do you solemnly swear  
11 that [indiscernible] today before the [indiscernible]?

12 MR. KIELTY I do.

13 THE COURT: All right.

14 MR. MCCARRICK: Permission to approach the witness  
15 in the [indiscernible] --

16 THE COURT: Yes, please.

17 MR. MCCARRICK: -- copy of the binder.

18 THE COURT: Absolutely.

19 MR. KIELTY: Thank you.

20 THE COURT: Just for everyone's guidance, we  
21 will need to break at about 4:50, 4:55, I have another, I  
22 have a 5:00 here. I have another matter. So --

23 MR. MCCARRICK: May I proceed?

24 THE COURT: Please.

25 MR. MCCARRICK: Can you introduce yourself to the

1 court?

2 MR. KIELTY: Sure, my name is Ryan Kielty. I'm a  
3 partner with Centerview Partners in the debt advisory and  
4 structure and practice.

5 MR. MCCARRICK: What kind of firm is Centerview,  
6 Mr. Kielty? What sort of work does Centerview do?

7 MR. KIELTY: Centerview is an investment banking  
8 advisory firm. We provide companies and occasionally  
9 creditors with advice on mergers and acquisitions, on  
10 restructuring matters, on financing processes, on liability  
11 management, a full range of corporate finance advisory help.

12 MR. MCCARRICK: What, if any, experience do you  
13 personally have in restructuring matters?

14 MR. KIELTY: For approximately 17 years I've  
15 been working in the debt advisory infrastructure industry,  
16 initially with Noah Bruckfire [ph]. And then starting in  
17 2011 with Centerview Partners. Both consistent roles  
18 advising companies and creditors in restructuring matters.

19 MR. MCCARRICK: How did Centerview become involved  
20 in these Chapter 11 cases?

21 MR. KIELTY: Centerview was retained by the  
22 debtors in June of 2022 to provide advice on a full range of  
23 financing, structuring alternatives. And sale alternatives.

24 MR. MCCARRICK: I'm going to talk about two areas  
25 and your involvement in these cases. The first is the sales

1 process for the debtors. And the second is the valuation of  
2 the debtors mining business.

3 MR. KIELTY: Okay.

4 MR. MCCARRICK: Are you familiar with the marketing  
5 sales and auction process that the debtors participated in  
6 for their assets?

7 MR. KIELTY: Yes, I am.

8 MR. MCCARRICK: Let's start with fall of 2022. Can  
9 you describe the initial sales process?

10 MR. KIELTY: Sure, so I think just for  
11 organization, I'll start with the mining sale process even  
12 though the kickoff of that lagged the, what I'll call the  
13 platform sale process by a few months. So we initiated a  
14 mining sale process in November of 2022. We contacted over  
15 70 potential acquirers. I think the exact number was 78. We  
16 signed about 15 nondisclosure agreements for parties of that  
17 78 that were interested in participating in the process. And  
18 the sale process mandate was quite broad. At that point we  
19 did not know exactly what the shape of the case, ultimate  
20 plan or sale would take. And so we were open and flexible to  
21 bids in all forms. Bids for individual mining assets, bids  
22 for the mining business as a whole co, bids for parties that  
23 wished to reorganize the mining business and leave an equity  
24 stake behind for creditors. Sort of the broad structure.  
25 After a month of providing diligence information, including

1 a business plan, structural information about all the  
2 assets, diligence you'd expect to include in a sale process.  
3 In December we received seven bids. Three of those bids were  
4 for the mining business in its entirety. And then four bids  
5 were for individual assets of the mining business. Of the  
6 three holistic bids for mining, one of them was for \$10  
7 million plus a very small earn out. One of them was for an  
8 enterprise value of approximately 175 million but that  
9 enterprise value was contingent upon those proceeds being  
10 financed in the marketplace. The buyer was not coming to the  
11 table with any cash proceeds for the assets and financing at  
12 that time was very difficult and we do not believe that  
13 financing could be raised to fund that purchase. And then  
14 the third whole co-bid was for an enterprise value of  
15 approximately \$300 million but that bid would have left the  
16 creditors of the debtors with a very small equity stake  
17 sitting behind a tranche of debt, large tranche of debt that  
18 the buyer was proposing to put in and own which had punitive  
19 terms.

20 MR. MCCARRICK: All right, you just talked about  
21 the mining bids. You had also mentioned some platform bids.  
22 Can you describe the platform bids that the debtors received  
23 in connection with the sales process?

24 MR. KIELTY: Sure. I guess before I get there,  
25 the other four bids for mining were bids for individual

1 assets, primarily bids for small selections of rigs, eight  
2 to ten thousand rigs with prices in the 350 to 550 dollars  
3 per rig level. For the platform bid process, we started that  
4 process earlier in September of 2022. We reached out to a  
5 similar number of parties for the mining business, over 70,  
6 signed a similar quantum of NDA's, 15. So an aggregate  
7 between the two processes there was a little bit of overlap  
8 but we reached out to about 135 total bidders for the two  
9 asset buckets. Similar to the mining process, we were  
10 flexible on the bids that we would consider. We would  
11 consider all structures. We would also consider bids that  
12 included mining, bids that excluded mining, again, because  
13 we weren't sure exactly what that value maximizing  
14 formulation of sale would be. We did extensive diligence  
15 with those bidders. Ultimately at the end of November we  
16 received three bids for the non-mining assets as a whole and  
17 then two bids for specific assets of non-mining, mostly  
18 focused on the company's large staked ETH position, which  
19 brought substantial discounts. So of the three bids that  
20 were total company bids, we received a NovaWulf bid, which  
21 we ultimately selected as the stalking horse. And we  
22 received two other bids, one of them was from a party that  
23 was seeking to take the non-mining assets of Celsius, a  
24 subset of them actually not even all of them, put them onto  
25 their platform, open accounts for Celsius creditors and then

1 allow Celsius creditors access to those assets with trading  
2 fees and other economics for the acquirer. And that bidder  
3 had had regulatory issues in other Chapter 11 cases that  
4 were going on at the time so we didn't feel that bid was one  
5 we could pursue. And then the second bid, other than the  
6 NovaWulf bid was from a party that had a relatively small  
7 platform at the time and was looking to set up individual  
8 SPV's for Celsius' non-mining assets that would be  
9 individually traded on that platform. And that was just,  
10 that platform was not tested at the quantum of what that  
11 transaction would be. It had only transacted a small  
12 fraction of the total asset size of what the Celsius bid  
13 would mean for that company. And also because the assets  
14 would be individually traded, we thought liquidity would be  
15 at issue. And so at that point the NovaWulf bid which  
16 provided a comprehensive solution for the vast majority of  
17 Celsius' assets, including mining, we thought was the best  
18 bid and we thought it was important to have a floor for the  
19 sale process going forward. And so we moved to make that  
20 bid, the stalking horse. So I think the, one of the factors  
21 we've learned from the mining process that sort of informed  
22 our selection when it came to the platform-winning-bidder  
23 was that the mining bids were very, very low for the total  
24 company and/or inexecutable. And so it was, we thought it  
25 was important that there be a solution for mining to



1 effectively delivery the equity of mining back to the  
2 creditors because selling it at that time didn't make sense.  
3 And so that was sort of further rational for why the  
4 NovaWulf we viewed at the time is the best path forward.

5 MR. MCCARRICK: When you describe the NovaWulf as a  
6 stalking Horse, what exactly do you mean by that?

7 MR. KIELTY: I mean that what we intended was  
8 that NovaWulf there would be a floor and that it would  
9 provide certainty to the estates of an exit at a time in the  
10 future and that we would use that floor as a springboard to  
11 further market the assets in the hopes that we could have a  
12 competitive process which we ended up, which we did.

13 MR. MCCARRICK: Okay.

14 THE COURT: What was the Bitcoin price at the  
15 time of the NovaWulf bid?

16 MR. KIELTY: So the Bitcoin price in November, I  
17 don't remember off the top of my head, Your Honor, I  
18 apologize.

19 MR. MCCARRICK: You describe the --

20 MR. KIELTY: I think I remember it being 24-ish,  
21 perhaps, something like that.

22 MR. MCCARRICK: You describe the competitive  
23 process that followed selection of NovaWulf as the stalking  
24 horse bid, was that processed in the auction?

25 MR. KIELTY: I'm sorry, can you repeat that

1 question?

2 MR. MCCARRICK: Yeah, sure. Following the selection  
3 of the NovaWulf bid you testified that there was a  
4 competitive process, was that the auction process?

5 MR. KIELTY: So after the stalking horse bid was  
6 selected, we made calls to parties that had declined in the  
7 sale process that had let up to that point. We also got  
8 inbounds from other parties like the Fahrenheit Group that  
9 had not participated previously in the sale process. And so  
10 we conducted diligence with those bidders and set a  
11 qualified bid deadline in this spring of 2023. And we  
12 collected additional bids from Fahrenheit and BRICK and one  
13 other at that point. So that's the process that came after  
14 the selection of the Stalking Horse. And then at that point  
15 we selected Fahrenheit and BRICK and we qualified those  
16 bidders and together with NovaWulf they participated in the  
17 auction. The other bid that I mentioned that we received at  
18 that time, there were significant financing contingencies  
19 and from a diligence perspective they were months and months  
20 behind the other bidders and so we didn't feel that that was  
21 actionable.

22 THE COURT: Had you reached out to BRICK and  
23 Fahrenheit during the initial round of assessing interest in  
24 this?

25 MR. KIELTY: So Fahrenheit as an investor group

1 was not composed yet and so we did not reach out to the  
2 members of Fahrenheit because I think on their own, given  
3 the size of the assets we were marketing, they wouldn't have  
4 been actional bidders and we didn't think to call them up at  
5 that time. With BRICK we got an inbound from Global X  
6 Digital in the fall around the September, October timeframe.  
7 We had sent them an NDA, they didn't come back to us but  
8 then they re-engaged after the stalking horse bid was put on  
9 the record and so we engaged with them at that time.

10 MR. MCCARRICK: I guess, what group was ultimately  
11 successful in their bid and why?

12 MR. KIELTY: So we, together with the creditors  
13 committee ultimately selected Fahrenheit as the winning  
14 bidder. As it's described in the disclosure statement, at  
15 the outset of the auction we had selected the BRICK which  
16 was a winddown bid as the highest and best. Because at that  
17 time with what had happened to Bitcoin prices and the other  
18 factors around the industry, the fees in the NovaWulf bid  
19 were entirely too high. And at that point a winddown made  
20 the most sense given that a fee structure that was contained  
21 in that bid. In, I'm not sure if it was the second or third  
22 round of the auction, both platform NewCo bidders,  
23 Fahrenheit and NovaWulf significantly improved their fee  
24 structures by hundreds of millions of dollars. And at that  
25 point it became clear, given the businesses that they were

1 to create and the potential return profile there and their  
2 expertise, that a NewCo bid was better than a winddown bid.  
3 And so the NewCo bidders went back and forth over multiple  
4 rounds, ultimately the fee structures for the NovaWulf bid  
5 and Fahrenheit bid were very similar. Minor differences  
6 between the two of them. And so what it really came down to  
7 is the collective you between the debtors and the creditors  
8 committee as to which of the management teams we were  
9 selecting was going to drive the greatest value for  
10 creditors, who was going to build, manage the mining  
11 business most successfully, most profitably, monetize the  
12 illiquid assets in a very value maximizing way and run a  
13 staking business and build a staking business relatively  
14 quickly. The committee members felt very strongly that the  
15 Fahrenheit Group met those more qualitative factors and the  
16 debtors, we supported them in that distinction. From the  
17 debtors' perspective, we think it was quite close but I  
18 would say on mining we really were incredibly impressed with  
19 the US Bitcoin Group and we thought that that would be the  
20 best choice for mining. And as it relates to the other  
21 business lines, again, we thought it was close but  
22 ultimately, you know, agreed with the committee.

23 MR. MCCARRICK: Okay, I want to switch gears to  
24 valuation. Was Centerview asked to value the debtors' mining  
25 assets?

1 MR. KIELTY: Yes, we were.

2 MR. MCCARRICK: And what sort of valuation were you  
3 asked to perform?

4 MR. KIELTY: We were asked to value the  
5 enterprise value of the mining business.

6 MR. MCCARRICK: And what is enterprise value  
7 measure?

8 MR. KIELTY: The total value of the company and  
9 all of its assets.

10 MR. MCCARRICK: What methodology or methodologies  
11 did you and Centerview team use to generate that enterprise  
12 value for the debtors' mining assets?

13 MR. KIELTY: So we used two methodologies to  
14 value mining business. We used a discounted cash flow  
15 methodology using the on lever free cash flow forecast that  
16 we received from the debtors in consultation with  
17 Fahrenheit. And then we also used a public company multiples  
18 analysis and we used two variants of that. We measured  
19 enterprise value as a multiple of the current, meaning May  
20 2023 when we performed the valuation. The current hash rate  
21 of the enterprise. And then we also measured enterprise  
22 value based on the projected end of 2023 hash rate for the  
23 enterprise. Mining companies are valued based upon a  
24 multiple of their computing power and so that's why we used  
25 those multiples. So we took the lows of those three data

1 points and the highs of the range of those three data  
2 points, the average of those lows and highs is the 410 to  
3 720 million valuation disclosure statement of which 565 is  
4 the midpoint.

5 MR. MCCARRICK: All right, Mr. Kielty, can you open  
6 up the binder in front of you?

7 MR. KIELTY: Sure.

8 MR. MCCARRICK: This is Celsius Exhibit 45. For the  
9 record, Exhibit 45 is a copy of Mr. Kielty's declaration. Is  
10 that a true and accurate copy of your declaration?

11 MR. KIELTY: Yes, it is.

12 MR. MCCARRICK: Do you adopt the statements in your  
13 declaration and the analysis in the attached valuation  
14 report as your, excuse me, do you adopt the statements in  
15 your declaration as your testimony under oath here today?

16 MR. KIELTY: I do.

17 MR. MCCARRICK: Your Honor, we move that Celsius  
18 Exhibit 45 be entered into evidence.

19 THE COURT: Any objections? All right, Celsius  
20 Exhibit 45 is admitted into evidence.

21 MR. MCCARRICK: Mr. Kielty, can you now turn to  
22 debtors Exhibit 8 in your binder? For the record, Exhibit 8  
23 is a copy of the mining valuation analysis, attaches and  
24 exhibit to the debtors disclosure statement. [indiscernible]  
25 that document, sir?

1 MR. KIELTY: Yes, I am.

2 MR. MCCARRICK: Does that fairly describe the  
3 mining valuation analysis that Centerview performed?

4 MR. KIELTY: It does.

5 MR. MCCARRICK: Your Honor, we would move that  
6 Celsius Exhibit 8, which has not been objected to, be  
7 entered into evidence.

8 THE COURT: Any obstruction? Admitted into  
9 evidence.

10 MR. MCCARRICK: All right, thank you for your time,  
11 Mr. Kielty. We'll pass the lens.

12 THE COURT: Thank you very much. All right,  
13 cross examination. [indiscernible] Yes, Trustee?

14 MS. Cornell: No, thank you.

15 THE COURT: All right, anyone on Zoom or in the  
16 courtroom, anyone else with to wish to examine Mr. Kielty?

17 MR. SHEIK: Yes, Your Honor, if I may.

18 THE COURT: Please, go ahead, Mr. Sheik.

19 MR. SHEIK: Mr. Kielty, I do have a question,  
20 in regards to, now, when you guys did perform, you were one  
21 of the first auditing firms that did a full review and audit  
22 of the CNL and the value of the contents or the, as they  
23 say, illiquid assets, or illiquid crypt in CNL, is that  
24 correct?

25 MR. KIELTY: No, we're not an auditing firm and

1 didn't perform any such audit.

2 MR. SHEIK: Okay, so to your knowledge, do you  
3 know what the valuation of CNL was at that time or is that  
4 something that you were not privy to or do not have any  
5 oversight on?

6 MR. KIELTY: I do not.

7 MR. SHEIK: Okay, never mind then. Thank you, I  
8 appreciate the, those are all the questions I have.

9 THE COURT: Thank you very much, Mr. Sheik.  
10 Anybody else wish to cross examine?

11 MR. PHILLIPS: Yes, Your Honor.

12 THE COURT: Mr. Phillips, go ahead.

13 MR. PHILLIPS: Hi, Mr. Kielty. Let me start with  
14 the auction process which is, you just testified to and is  
15 paragraph 9 of your declaration. In your experience, what's  
16 the typical length of a formal bankruptcy auction?

17 MR. KIELTY: I would say that there's no typical  
18 length but I would agree typical bankruptcy auctions are  
19 shorter than the auction here for the debtors.

20 MR. PHILLIPS: And what would you attribute the  
21 extended length of this particular auction to?

22 MR. KIELTY: Well I think there were a number of  
23 factors, one, this was a very complex transaction. Both the  
24 winddown transaction proposed by BRICK as well as the NewCo  
25 style transactions proposed by NovaWulf and Fahrenheit, both



1 had intricate regulatory frameworks. They both had, they all  
2 had business lines that are quite complicated to understand.  
3 And I think more important than the complexity, regardless  
4 of which of those three bidders we ultimately went with,  
5 there was some degree, meaningful degree of ongoing  
6 management of these assets going forward that the creditors  
7 would be relying upon to generate meaningful value and  
8 recovery. And so a significant part of the auction was  
9 spending time with each of the bidders hearing, it had to be  
10 hundreds of pages around business planning, bios, prior  
11 experience and getting that familiarity with each of the  
12 bidder groups so that in addition to just the economic  
13 proposals around management fees the debtors and the  
14 creditors committee could make a determination based on the  
15 very important qualitative factors that, you know, weighed  
16 heavy on the decision as to who the winning bidder would be.  
17 And that took a lot of time.

18 MR. PHILLIPS: Fair enough. And getting up to the  
19 end of the auction when the decision essentially was, I  
20 believe, by the debtor that the two business economically  
21 equivalent and you deferred to the UCC and their advisors in  
22 determining which was the best bid at that time.

23 MR. MCCARRICK: Objection, Your Honor.

24 MR. PHILLIPS: And make sure the --

25 THE COURT: Sustained.

1 MR. PHILLIPS: Can I get to the end of the auction  
2 and can you describe the role that Perella Weinberg  
3 Partners and in particular that Mr. Aidoo in aiding the  
4 committee and the debtor in selecting Fahrenheit as the  
5 winning bidder.

6 MR. KIELTY: I know that Mr. Aidoo was a part of  
7 the Perella team that at times was at the auction. But I,  
8 you know, the creditor's committee had their own room. I'm  
9 not privy to the advice or activity of Mr. Aidoo in the  
10 committee's deliberations.

11 MR. PHILLIPS: Were there any other distinct  
12 members of the Perella team present at the auction?

13 MR. KIELTY: Yes, Perella had a large team at  
14 the auction.

15 MR. PHILLIPS: Thank you. Moving onto the  
16 valuation. And you admitted, I forget the number on the  
17 debtor advise, but Exhibit D, which is the valuation  
18 analysis, and I submitted that as an exhibit for cross  
19 examination as well.

20 MR. MCCARRICK: It's Exhibit 8. 8.

21 MR. PHILLIPS: Exhibit 8 in the debtors in the  
22 [indiscernible], the first part of that.

23 MR. KIELTY: I have it in front of me, Mr.  
24 Phillips.

25 MR. PHILLIPS: You did, okay. And you mentioned in

1 your testimonial the range of [indiscernible] was, I believe  
2 the lows and highs of three different valuations, did you  
3 see that? And market value comparable is based on both the  
4 current EVA [ph] hash rate and EVA hash rate and SCN [ph] at  
5 the end of 2023.

6 MR. KIELTY: That's correct.

7 MR. PHILLIPS: In your experience, is a range of  
8 75 percent typically of a valuation computed?

9 MR. KIELTY: I think that every valuation is  
10 unique and different to the situation. And I think that  
11 range is appropriate under the circumstances.

12 MR. PHILLIPS: How many past valuations  
13 approximately is a fraction of the ones that you've done in  
14 your career that have a range of equal to or greater than 75  
15 percent?

16 MR. KIELTY: I don't know that data point off  
17 the top of my head.

18 MR. PHILLIPS: Can you list the market comparable  
19 companies that were used as your comparable in the  
20 valuation.

21 MR. KIELTY: I don't have it in front of me, Mr.  
22 Phillips, but I know that we used eight companies in our  
23 public companies analysis. There's no perfect comparable, as  
24 in many situations. Within that public company set we had  
25 Riot, Marathon, Hut 8, Adjusted, Proforma for the US Bitcoin

1 merger. Clean Spark, Irish Energy, Tarawolf, I'm forgetting  
2 one or two off the top of my head.

3 MR. PHILLIPS: And did you use all eight data  
4 points or did you elect to save the one, you know, sometimes  
5 in these market comparables people disregard one because  
6 they say it's too far out of the range with the others?

7 MR. KIELTY: We took the metrics for all of the  
8 public companies that we chose into consideration in  
9 selecting the ranges. Then ultimately informed the ultimate  
10 range that's in the disclosure statement. We did not  
11 disqualify any one data point. We interpreted what we saw  
12 and assessed, each of those companies as relative to the  
13 Celsius mining assets where they are in their lifecycle. You  
14 know, what portion is hosted versus proprietary among many,  
15 many other factors. And then we chose a range based on that  
16 analysis.

17 MR. PHILLIPS: Were you and Centerview involved in  
18 the preparation of the disclosure statement, in particular  
19 the section regarding the waited distributional action?

20 MR. KIELTY: No, we were not.

21 MR. PHILLIPS: Okay, that's the end of my  
22 questions.

23 THE COURT: Thank you very much, Mr. Phillips.  
24 Anybody else wish to cross examine? Any redirect?

25 MR. MCCARRICK: No, Your Honor.

1 THE COURT: Anybody else? You're excused. Thank  
2 you very much for your testimony.

3 MR. KIELTY: Thank you.

4 MR. MCCARRICK: T.J. McCarrick, Kirkland and Ellis  
5 on behalf of the debtors. The debtors call Joel Cohen to the  
6 stand.

7 THE COURT: Mr. Cohen, come on up.

8 (Whereupon the Witness was sworn in.)

9 THE COURT: Thank you very much. Mr. Cohen.

10 MR. MCCARRICK: Your Honor, permission to approach  
11 the witness box.

12 THE COURT: Please.

13 MR. COHEN: Thank you.

14 MR. MCCARRICK: Good afternoon, could you introduce  
15 yourself to the court?

16 MR. COHEN: Joel Cohen.

17 MR. MCCARRICK: What do you do for a living, Mr.  
18 Cohen?

19 MR. COHEN: Forensic account, valuation, and  
20 restructuring consulting.

21 MR. MCCARRICK: Where do you do that?

22 MR. COHEN: At Stout.

23 MR. MCCARRICK: What kind of firm is Stout?

24 MR. COHEN: Stout's a professional services  
25 form that focuses in this space as well investment banking,

1 accounting advisory.

2 MR. MCCARRICK: What kind of experience do you  
3 personally have in restructuring reorganization.

4 MR. COHEN: I've been doing this type of work  
5 for almost 20 years. So I'm focused in sort of as an FA of  
6 being a consulting expert or providing evidence.

7 MR. MCCARRICK: How did Stout become involved in  
8 these Chapter 11 cases?

9 MR. COHEN: The interim management of the  
10 company reached out for a consultation on valuation.

11 MR. MCCARRICK: What valuation analysis was Stout  
12 asked to perform?

13 MR. COHEN: We were asked to take a select  
14 listing of assets that the company held and perform a fair  
15 value.

16 MR. MCCARRICK: What's a fair value analysis?

17 MR. COHEN: The receipt of a price for an asset  
18 or payment of consideration for a liability at a particular  
19 time.

20 MR. MCCARRICK: And what markets of the debtors'  
21 assets did you perform an evaluation analysis for?

22 MR. COHEN: There were three assets classes.  
23 The first was cryptocurrency or digital assets. The next was  
24 loans or the lending platform. And then the final were  
25 alternative assets.

1 MR. MCCARRICK: I'm going to start with the first  
2 bucket. How did you value debtors' cryptocurrency assets?

3 MR. COHEN: We needed to come up with a  
4 principle market. They were liquid coins that were traded  
5 over a number of different block chains and so we performed  
6 an analysis to obtain the best or what we felt was the  
7 principle market. And then we received a price for the  
8 assets and given that there wasn't a stoppage of trading at  
9 this, you know, for these types of assets, we performed an  
10 average. We would have a cut off at 4:00 p.m. on a  
11 particular date and then average over the prior 24 hours.

12 MR. MCCARRICK: Did you make any adjustments for  
13 the valuation of liquid cryptocurrency assets versus liquid  
14 assets?

15 MR. COHEN: Yeah, for those that were liquid we  
16 had what's typical discount for lack of marketability. The  
17 inability to trade freely.

18 MR. MCCARRICK: The second bucket of assets. How  
19 did Stout go about valuing the debtors institutional loans?

20 MR. COHEN: For the loans we looked to see  
21 which of the loans were performing and which might not be.  
22 And for the ones that were performing it was principle  
23 interest plus the coupon and just performed a market  
24 approach for that. And then for the nonperforming we worked  
25 with management to understand what the situation was and how

1 best to put a discount rate on it.

2 MR. MCCARRICK: And the third bucket of assets, how  
3 did Stout value the debtors' alternative investments?

4 MR. COHEN: Similar, we looked at the  
5 agreements that were provided to us by management to  
6 understand the assets and provide the right discount for  
7 those assets.

8 MR. MCCARRICK: All right, could you open the  
9 binder in front of you to Celsius Exhibit 51?

10 MR. COHEN: Sure.

11 MR. MCCARRICK: And for the record, that's a copy  
12 of Mr. Cohen's declaration with attached exhibits which was  
13 filed as docket number 3588. Is Exhibit 51 a true and  
14 accurate copy of your declaration?

15 MR. COHEN: It is.

16 MR. MCCARRICK: And is the attachment a true and  
17 accurate of Stout's evaluation reports?

18 MR. COHEN: It is.

19 MR. MCCARRICK: Your Honor, at this time, the  
20 debtors would move Exhibit 51 into evidence.

21 THE COURT: Any objection? Green on submitted  
22 into evidence.

23 MR. MCCARRICK: All right, Mr. Cohen, did you  
24 prepare any visual showing the upshot of your analysis for  
25 these three asset classes?



1 MR. COHEN: Yeah, for help today we had one  
2 slide just to have a summary.

3 MR. MCCARRICK: All right, and if Mr. Young could  
4 made a cohost so he could share what we'll mark as Debtors'  
5 Demonstrative 1. Permission to approach.

6 THE COURT: Yes, please, go ahead.

7 THE CLERK: Mr. Young is a cohost.

8 MR. MCCARRICK: Mr. Cohen, can you describe what's  
9 reflected in this demonstrative?

10 MR. COHEN: This is a summary or the total  
11 value attributed to the three categories of assets that we  
12 just described.

13 MR. MCCARRICK: And what was the total?

14 MR. COHEN: 3.2 billion.

15 MR. MCCARRICK: And was that conclusion reached to  
16 a sufficient degree of certainty?

17 MR. COHEN: Yes.

18 MR. MCCARRICK: Your Honor, pass the witness.

19 THE COURT: All right, cross examination. But  
20 first, does the committee have any examination  
21 [indiscernible].

22 MR. MCCARRICK: No, Your Honor.

23 THE COURT: Yes, Trustee. Anyone else in the  
24 courtroom. Anyone on Zoom?

25 MR. SHEIK: Yes, Your Honor.

1 THE COURT: Go ahead, Mr. Sheik.

2 MR. SHEIK: Mr. Kielty, could you, for the  
3 record, state what the valuation of the CNL assets were at  
th  
4 the beginning of Chapter 11 which is dated 14 of July 2022.

5 MR. COHEN: This is Mr. Cohen, and we were not  
6 asked to value the CEO, is that's, if I heard you correctly.

7 MR. SHEIK: No, no, was it valued at 9.8  
8 billion?

9 MR. COHEN: I'm --

10 THE COURT: I don't understand your question,  
11 Mr. Sheik.

12 MR. COHEN: I don't either.

13 MR. SHEIK: I was just looking to see what the  
14 valuation of CNL, what assets, you know, the liquid assets  
15 were at the time as you entered Chapter 11.

st

16 MR. COHEN: So our report was as of May 31 .

17 MR. SHEIK: Of '23.

18 MR. COHEN: Yeah, 2023.

19 MR. SHEIK: Got it, okay. And per the previous  
20 slide, I believe, that the final conclusion was 3 point, I  
21 believe, point 5 billion dollars was the amount that it was  
22 valued at after adjustments, correct?

23 MR. COHEN: It was 3.2 billion for the select  
24 assets that were provided to us.

25 MR. SHEIK: I apologize, that's what I saw, I

1 just got a quick glimpse of it. That's all I needed to know.

2 Thank you very much.

3 THE COURT: Thank you, Mr. Sheik. Anyone else  
4 with to cross examine?

5 MR. PHILLIPS: Yes, Your Honor.

6 THE COURT: Mr. Phillips.

7 MR. PHILLIPS: Thank you, Your Honor. Let's see, I  
8 submitted amended sort of exhibits and if I could ask you  
9 about one of them. It's entitled disclosure statement  
10 weighted distribution election example.

11 THE COURT: If you would hold on, please, Mr.  
12 Phillips, I think Mr. McCarrick is going to bring that to  
13 the court and to the witness, all right?

14 MR. COHEN: Thank you.

15 THE COURT: All right, Mr. Phillips.

16 MR. PHILLIPS: Do you recognize this?

17 THE COURT: You're talking about the last page,  
18 the weight of distribution?

19 MR. COHEN: The --

20 MR. PHILLIPS: It says disclosure statement  
21 weighted distribution example, it's a screenshot of the  
22 [indiscernible] the bottom of page 24 and the top of page 55  
23 from the disclosure statement.

24 MR. COHEN: I don't recognize it but I  
25 understand what it is.

1 MR. PHILLIPS: Okay, do you know who prepared  
2 this?

3 MR. COHEN: I don't.

4 MR. PHILLIPS: Okay. Do you believe, what is your  
5 belief that a reasonable creditor who was billing on the  
6 plan would infer that it would receive if they elected the  
7 liquid cryptocurrency weighted distribution as compared to  
8 the default election.

9 MR. PHILLIPS: Objection, Your Honor.

10 THE COURT: Sustained.

11 MR. PHILLIPS: Okay. In your fair value analysis,  
12 did you estimate the overall enterprise value of the company  
13 or, including the mining company or did it exclude the  
14 mining company?

15 MR. COHEN: We did not perform a fair value, or  
16 enterprise value for the entire company. And we did not  
17 value the mining company.

18 MR. PHILLIPS: So you had the assets, other than  
19 the mining company and Centerview valued the mining company  
20 but nobody, to your knowledge, valued the entire enterprise?

21 MR. COHEN: I don't believe so.

22 MR. PHILLIPS: Thank you, no further questions.

23 THE COURT: Thank you, Mr. Phillips. Anyone  
24 else wish to cross examine?

25 MR. KIRSANOV: Yes, Your Honor. Dimitry Kirsanov

1 with Perasonia [ph].

2 THE COURT: All right, go ahead.

3 MR. KIRSANOV: Were all digital currency assets  
4 categorized based on their valuation at the time of  
5 bankruptcy?

6 MR. COHEN: I'm sorry, can you repeat the  
7 question?

8 MR. KIRSANOV: Certainly. Were all digital  
9 currency assets categorized based on their valuation at the  
10 time of bankruptcy?

11 MR. COHEN: I'm not sure if they were all  
12 categorized at the time of bankruptcy.

13 MR. KIRSANOV: Does the analysis encompass the  
14 cell token?

15 MR. COHEN: This analysis does not encompass  
16 the cell token.

17 MR. KIRSANOV: Thank you, I have no further  
18 questions.

19 THE COURT: Thank you. Anyone else wish to  
20 cross examine?

21 THE CLERK: I don't see any raised hands, judge.

22 THE COURT: You're excused. Well, let me ask,  
23 any redirect?

24 MR. MCCARRICK: No, Your Honor.

25 THE COURT: Anyone else? You're excused. Thank

1       you very much for your testimony.

2               MR. COHEN:       Thank you.

3               MR. MCCARRICK: Your Honor, my watch has ended.

4               THE COURT:       You're passing the baton.

5               MR. MCCARRICK: My, I'm passing baton to my  
6       colleague Hannah Simson.

7               THE COURT:       Oh, Ms. Simson, okay. Who are you  
8       calling as your witness, Ms. Simson?

9               MS. SIMSON:       Mr. Karpuk.

10              THE COURT:       Can you say it again, I couldn't  
11       hear you.

12              MS. SIMSON:       Mr. Brian Karpuk, Your Honor.

13              THE COURT:       Okay, thank you very much.

14              MS. SIMSON:       Your Honor, Hannah Simson with  
15       Kirkland and Ellis, debtors call Mr. Karpuk to the stand. I  
16       also have some exhibit binder to the witness, permission to  
17       approach the stand.

18              THE COURT:       Please, absolutely.

19              THE CLERK:       [indiscernible]

20              MR. KARPUK:       I do.

21              THE COURT: Thank you, Karen. Good afternoon, Mr.  
22       Karpuk.

23              MR. KARPUK:       Good afternoon, Your Honor.

24              THE COURT:       Ms. Simson.

25              MS. SIMSON:       May I proceed, Your Honor?

1 THE COURT: Please.

2 MS. SIMSON: Can you please introduce yourself  
3 to the court?

4 MR. KARPUK: My name is Brian Karpuk and I'm  
5 Managing Director with Streto. Streto was retained as the  
6 official claims and noticing agent and administrative  
7 advisor in these cases.

8 MS. SIMSON: How long have you worked for  
9 Streto?

10 MR. KARPUK: I've worked for Streto for  
11 approximately four years.

12 MS. SIMSON: And how did you get involved in the  
13 Celsius Chapter 11 cases?

14 MR. KARPUK: Streto was retained approximately a  
15 month prior to the petition date and we have been engaged  
16 with the debtors as both a claims and noticing agent and  
17 administrator advisor throughout the case.

18 MS. SIMSON: I'd like to spend a couple minutes  
19 on this solicitation and tabulation process. What have your  
20 roles and responsibilities been in connection with the  
21 Chapter 11 cases here?

22 MR. KARPUK: Strato's engaged as a claims and  
23 noticing agent and then with respect to solicitation and  
24 tabulation, Strato worked with the debtors legal advisors  
25 and financial advisors to classify claims pursuant to the

1 courts order approving disclosure statement and solicitation  
2 and voting procedures to identify parties that were entitled  
3 to vote and receive solicitation packages and then to ballot  
4 and send ballots or solicitation packages to all parties and  
5 interest.

6 MS. SIMSON: What informed procedures you used  
7 when soliciting and tabulating the votes?

8 MR. KARPUK: Strato used, in connection with our  
9 discussions with the debtors' counsel we used the courts  
10 order approving the disclosure statement and solicitation  
11 and tabulation procedures.

12 MS. SIMSON: Do you have experience in ballot  
13 restructuring?

14 MR. KARPUK: I've been in the restructuring  
15 industry for approximately 20 years. For the last 15 I've  
16 been a claims and noticing agent and prior to that I was an  
17 attorney practicing court restructuring.

18 MS. SIMSON: I had handed you your amended  
19 declaration at docket number 3574. Your Honor, debtors  
20 premarked this as Exhibit 60. I will review to it as exhibit  
21 60.

22 THE COURT: Okay.

23 MS. SIMSON: Is this a true and accurate copy of  
th  
24 the declaration that you signed on September 27 , 2023?

25 MR. KARPUK: It is.



1 MS. SIMSON: Do you adopt the declaration that  
2 you submitted as exhibit 60 as your sworn testimony under  
3 oath today?

4 MR. KARPUK: I do.

5 MS. SIMSON: Can you describe the process you  
6 and your team followed in soliciting and tabulating the  
7 votes?

8 MR. KARPUK: Once the disclosure statement was  
9 filed and the disclosure statement hearing was noticed, the  
10 debtors worked with the, Strato worked with the debtors  
11 legal advisors and financial advisors to identify all claims  
12 entitled to vote, to classify those claims into each of the  
13 individual classes. Strato also worked in connection with  
14 the debtors to ensure that it had the most up to date  
15 contact information that the debtors had one file,  
16 specifically the email address that was tied to each and  
17 every account. Which would then allow that account holder to  
18 log into a custom ballot portal that Strato had created. And  
19 when they logged in there that party's balloting information  
20 was available to them.

21 MS. SIMSON: Throughout the balloting process  
22 were there any material irregularities outside the norm you  
23 usually see in this process?

24 MR. KARPUK: There were not.

25 MS. SIMSON: What was the response rate for the

1 votes overall?

2 MR. KARPUK: We balloted approximately just over  
3 400,000 parties and we received just under 80,000 votes. I  
4 believe that's about 20 percent which is, you know, a  
5 relatively high percentage response rate. And I believe  
6 that, you know, over 50 percent of parties of account holder  
7 claims voted during the process.

8 MS. SIMSON: And can you summarize for the court  
9 how the classes voted?

10 MR. KARPUK: There were three classes which  
11 voted to reject and, but beyond that all other classes  
12 accepted and specifically with respect to the account holder  
13 classes, many of those classes accepted in the high 90  
14 percentile both by count and by dollar.

15 MS. SIMSON: And can you summarize for the  
16 court how the parties and interest voted for the cell token  
17 settlement?

18 MR. KARPUK: Voting for the cell token was very  
19 similar to, overall to the account holder classes. I believe  
20 --

21 THE COURT: Cell tokens were not in a separate  
22 class.

23 MR. KARPUK: That's correct. They were --

24 THE COURT: The holders of cell tokens were in  
25 multiple classes.

1 MR. KARPUK: That's correct.

2 THE COURT: And, am I correct, Strato broke  
3 out, was able to break out how cell token holders voted in  
4 the classes of which they voted for.

5 MR. KARPUK: That's correct, Your Honor.

6 THE COURT: Okay.

7 MS. SIMSON: And I would also like to admit  
8 exhibit number 60 through declaration into evidence today.  
9 Thank you for your . . .

10 THE COURT: Any objections? All right, exhibit  
11 60 is admitted into evidence.

12 MS. SIMSON: Thank you very much for your time,  
13 nothing further. Pass the witness.

14 THE COURT: All right, cross examination. Does  
15 committee wish to examine?

16 MR. COLODNY: No, Your Honor.

17 THE COURT: Ms. Trustee, Ms. Cornell?

18 MS. CORNELL: Good afternoon. Shara Cornell on  
19 behalf of the Office of the United States Trustee. I only  
20 have a few questions and they have been already answered but  
21 I'm just gonna ask them a little bit of a different way  
22 because sometimes it can be a little confusing with the  
23 voting tabulation. As part of your declaration you submitted  
24 several charts, are you familiar with them?

25 MR. KARPUK: I am.

1 MS. CORNELL: The charts reference accept or  
2 reject. Can you tell us how many ballots were actually sent  
3 out?

4 MR. KARPUK: I guess there was just over 400,000  
5 in the account holder classes plus, you know, a few hundred  
6 in the other classes. So probably just over 400,000.

7 MS. CORNELL: Do you know how many of those  
8 ballots that were sent out were undeliverable or not  
9 received by account holders?

10 MR. KARPUK: Strato worked ahead of time,  
11 because we had, we'd been doing email campaigns throughout  
12 the process and we preidentified approximately 20,000  
13 account holders that we expected to be undeliverable. And so  
14 during, currently with the email campaign, we also mailed  
15 physical solicitation packages to those 20,000. I believe  
16 when we then reanalyzed that the email campaign against what  
17 was expected, there were another maybe 500 parties that we  
18 mailed physical solicitation packages to.

19 MS. CORNELL: Okay. Also in the tabulation  
20 summaries provided, for example on page two of exhibit A,  
21 you know, you used the term all ballots, all ballots total.  
22 When you use that term in these charts, and again, I'm  
23 referring to page two of exhibit A to your declaration.

24 MR. KARPUK: Mm-hmm.

25 MS. CORNELL: Could you just explain what you

1 mean in that context? All ballots total. Is it all ballots,  
2 is it that 400,000 number that you referenced earlier?

3 THE COURT: Just orient me. I turned to that  
4 page but --

5 MS. CORNELL: Oh, I'm sorry.

6 THE COURT: No, that's okay. Just tell me where  
7 to look.

8 MS. CORNELL: Sure, page two of Exhibit A --

9 THE COURT: Yes.

10 MS. CORNELL: -- the declaration.

11 THE COURT: Yes. All right, I see it.

12 MS. CORNELL: Sure.

13 THE COURT: Thank you.

14 MS. CORNELL: And so my question is, you used the  
15 phrase all ballots total. Does that refer to that 400,000  
16 number you spoke of earlier or does that refer to the amount  
17 of ballots that were actually received in response by  
18 debtors?

19 MR. KARPUK: That is all ballots received in  
20 response. Whether that ballot was tabulated, whether it  
21 abstained or whether it was amended or late filed.

22 MS. CORNELL: And that leads me actually to my  
23 next question. Can you explain for the record what abstained  
24 means in this context, please?

25 MR. KARPUK: Abstained means that the voting

1 party came into the balloting portal. They may or may not  
2 have made an election, but they did not vote on the plan and  
3 they did click submit. The submit, they completed submission  
4 of their ballot but they did not vote to accept or reject  
5 the plan.

6 THE COURT: They electronically accessed the  
7 portal.

8 MR. KARPUK: All the way through the process to  
9 hit submit.

10 THE COURT: And they returned, but they hit  
11 submit, but it was a blank ballot.

12 MR. KARPUK: Although they may have made an  
13 election.

14 MS. CORNELL: And in that context, the election  
15 would've gone through?

16 MR. KARPUK: Yes.

17 THE COURT: Election for what?

18 MR. KARPUK: Third-party release or opt out of the  
19 class claim settlement. Any election that that particular  
20 ballot was entitled to make.

21 THE COURT: Thank you.

22 MS. CORNELL: And in conclusion, just for the  
23 record one more time, what percentage of accountholders  
24 actually voted?

25 MR. KARPUK: I --

1 THE COURT: When you say 'actually voted' --

2 MS. CORNELL: Not including the abstention number  
3 that we --

4 THE COURT: Leaving the abstentions out, how many  
5 that were returned actually had votes to count.

6 MS. CORNELL: Yes, Your Honor.

7 MR. KARPUK: I'd have to add it up here. I know we  
8 received about 79,500 ballots tied to, you know, unique  
9 accountholders, right? So they may have voted in more than  
10 one class. But if, you know, here there were -- I mean, it  
11 looks like there was probably 2 to 3,000 accountholders that  
12 submitted a ballot but did not vote, they abstained.

13 MS. CORNELL: Thank you. That's all I have for  
14 today.

15 THE COURT: Anybody else wish to examine?

16 MR. KIRSAKOV: Hi, Dmitry Kirsakov, pro se.

17 THE COURT: Yes, please go ahead.

18 MR. KIRSAKOV: Hi, Mr. Karpuk. A few questions.  
19 Was the valuation of CEL Token the sum of .25 cents for  
20 building leverage throughout the ballot vote, is that  
21 correct?

22 MS. SIMSON: Objection.

23 THE COURT: Sustained.

24 MR. KIRSAKOV: Who provided the directive to  
25 modify the bankruptcy date valuations of the CEL Token?

1 MS. SIMSON: Objection.

2 THE COURT: Sustained.

3 MR. KIRSAKOV: I will ask the witness to open Page  
4 2 to review the General Custody Claims. It appears that a  
5 significant portion of the CEL custody class have rejected  
6 the CEL Token settlement. Can you confirm that's accurate?

7 MR. KARPUK: By dollar amount, yes, 64 percent of  
8 the CEL Token holders in Class A voted to reject. Although  
9 by count, 97 percent voted to accept.

10 MR. KIRSAKOV: Can you confirm just the majority  
11 of CEL Token holders did in fact reject the plan?

12 MR. KARPUK: That is not correct.

13 MR. KIRSAKOV: CEL Token holders did not reject  
14 the plan?

15 MS. SIMSON: Objection.

16 THE COURT: Sustained.

17 MR. KARPUK: What percentage of CEL Token custody  
18 holders rejected the plan?

19 MS. SIMSON: Objection.

20 THE COURT: Are you able to answer that question?

21 MR. KARPUK: I mean, looking -- in general, the  
22 numbers for CEL Token holders mirrored overall. I think I --  
23 we received approximately 36,000 ballots from CEL Token  
24 holders, and they, in general, voted in the high 90 percent  
25 to accept the plan.



1 MR. KIRSAKOV: So you ventured that the outcomes  
2 for the CEL Tokens were comparable to other classes.  
3 However, is it accurate to state the monetary majority of  
4 the custody class holding CEL Tokens rejected the CEL Token  
5 class?

6 MS. SIMSON: Objection.

7 THE COURT: Sustained.

8 MR. KIRSAKOV: Is it accurate to state the  
9 monetary majority of voters in the custody class rejected  
10 the plan?

11 MS. SIMSON: Objected.

12 THE COURT: Sustained. Mr. Kirsakov, the  
13 tabulation is in evidence. When we get to the closing  
14 argument, you're certainly free to argue from the exhibit.  
15 But I don't understand your questions. I mean, the documents  
16 say what they say.

17 MR. KIRSAKOV: Thank you, Your Honor. I have no  
18 further questions.

19 THE COURT: Thank you. All right. Mr. Sabin, did  
20 you want -- anybody else wish to examine?

21 MR. PHILLIPS: Yes, Your Honor, yes.

22 THE COURT: Mr. Phillips.

23 MR. PHILLIPS: Thank you, Your Honor. And I, once  
24 again, I did submit an exhibit which is part of the Amended  
25 Declaration, and specifically Row 7 and 8 of the Amended

1 Declaration with regards to weighted distribution election.

2 THE COURT: All right, I have that opened in front  
3 of me. That's the last page of what you submitted, is that  
4 correct?

5 MR. PHILLIPS: I'm sorry?

6 THE COURT: Is that the last page of what you  
7 submitted? Weighted distribution election?

8 MR. PHILLIPS: Yes, yes.

9 THE COURT: Okay. Do you have it?

10 MR. KARPUK: I have the, my -- I don't have that,  
11 but I do have my thing here which is the -- I think that's  
12 what he's excerpting.

13 MR. COLODNY: Let me hand -- this is exactly what  
14 we're showing here. I want to be sure you have the same  
15 thing. Go ahead, Mr. Phillips.

16 MR. PHILLIPS: Okay. So, so in reviewing the  
17 results of the weighted distribution election, is it  
18 accurate to say that a total of \$112,131,300.78 in claims  
19 elected more crypto?

20 MR. COLODNY: Objection, Your Honor. This is a  
21 document that has totals on the bottom that apparently  
22 Mr. Phillips calculated by himself. Mr. Karpuk, if you gave  
23 him a calculator, might be able to do it, but there's no way  
24 to tell if these totals are accurate.

25 THE COURT: Sustained.

1 MR. PHILLIPS: Would you agree that that total,  
2 though, is approximate given that in Paragraph 16, you know,  
3 there's 960 million plus -- in holders of Class 5, then  
4 approximately, it's approximately accurate. And there's 163  
5 million in, in Paragraph 15 that elected that.

6 MS. SIMSON: Objection, Your Honor.

7 MR. COLODNY: Objection, Your Honor. The document  
8 speaks for itself.

9 THE COURT: Overruled.

10 MR. KARPUK: The numbers that I put forth within  
11 my Certification are accurate.

12 THE COURT: Okay.

13 MR. PHILLIPS: Would -- do you have any reason to  
14 doubt that if I told you that those numbers indicated that  
15 6.19 times as many claims were voted in favor of more crypto  
16 than more equity?

17 MS. SIMSON: Objection.

18 THE COURT: Overruled. You can -- if you're able  
19 to answer that, go ahead.

20 MR. KARPUK: Sure. Without doing the math, I do  
21 know that the cryptocurrency weighted election came in  
22 significantly higher than the share weighted election.

23 MR. PHILLIPS: Okay, thank you. Does that enable  
24 you to then -- to make any inference with regards to the 30  
25 percent discount that was offered on the price of the more

1 equity election?

2 THE COURT: I'm going to sustain an objection to  
3 that. The documents -- look, the vote was the vote. You could  
4 interpret it the way you want to interpret it, you can argue  
5 what you want to argue from it, but not with this witness.

6 MR. PHILLIPS: Your Honor, I guess I'm still  
7 puzzled as to who was responsible for the weighted  
8 distribution election and the Disclosure Statement given --

9 THE COURT: Mr. Phillips, your uncertainty is not  
10 relevant to questioning of this witness. If you want to  
11 submit a brief later on in this case, you can, but this  
12 witness is testifying about the ballots that were received,  
13 how they were counted, and I don't think you're asking him  
14 about that. Do you have any other questions?

15 MR. PHILLIPS: I have no further questions for  
16 this witness, Your Honor.

17 THE COURT: All right. Anybody else wish to  
18 question the witness?

19 MR. UBIERNA: Yes, Your Honor, if I May.

20 THE COURT: Who is that?

21 MR. UBIERNA: Victor Ubierna de las Heras, Pro Se  
22 Creditor.

23 THE COURT: Please, go ahead.

24 MR. UBIERNA: Was there -- okay, thank you. Was  
25 there an item on the ballot to opt out of the third-party

1 releases?

2 MS. SIMSON: Objection.

3 THE COURT: Overruled. Do you know -- in ballots,  
4 what opt-outs were provided?

5 MR. KARPUK: I believe that the -- each of the  
6 ballots contained -- each of the ballots in the voting  
7 classes contained an option to opt out of the third-party  
8 release.

9 THE COURT: And could people who voted in favor of  
10 the plan opt out of the releases?

11 MR. KARPUK: They could not.

12 THE COURT: Any other questions?

13 MR. UBIERNA: Do you have the -- yes, do you have  
14 the number of creditors that tried to opt out of the third-  
15 party releases but were not able to do so because they  
16 accepted the plan?

17 MR. KARPUK: As set forth in my Certification,  
18 5,160 holders attempted to opt out of those third-party  
19 releases but did accept the plan.

20 MR. UBIERNA: Okay. And do you have a total amount  
21 of that number of creditors?

22 MR. KARPUK: That is not a calculation that's in  
23 the Certification.

24 MR. UBIERNA: Okay, thank you. I have no more  
25 questions.

1 THE COURT: Thank you very much. Any additional  
2 cross-examination? You're excused. Thank you very much for  
3 your testimony. Well actually, is there any redirect?

4 MS. SIMSON: Nothing, Your Honor.

5 THE COURT: Deanna, is there somebody else? 'Cause  
6 I don't see any hands raised in my --

7 CLERK: Yeah, Mr. Patton, his hand was raised. Now  
8 it's back.

9 THE COURT: Mr. Patton, did you want to question  
10 the witness?

11 MR. PATTON: Yes, Your Honor. One question,  
12 please.

13 THE COURT: Okay, go ahead.

14 MR. PATTON: Sir, are you aware of any items that  
15 were not settled on the ballot or any elections for any  
16 creditors that had to be extended past the closure of  
17 voting?

18 MR. KARPUK: That is correct. During the process,  
19 we determined that parties within the convenience class were  
20 unable to make the election to opt out of the class claim  
21 settlement. We did open that ability for them to do that  
22 during the process. Subsequent to that in connection with  
23 Debtors' Counsel asked us after the voting period had  
24 completed to then e-mail each of the holders in those  
25 classes, and they have now until October 9th to return an e-

1 mail that says they'd like to opt out of that -- the class  
2 claim settlement.

3 MR. PATTON: Thank you very kindly. I have no  
4 further questions.

5 THE COURT: Thank you, Mr. Patton. Anybody else  
6 wish to examine? Mr. Adler?

7 MS. DOW: Sharon Dow.

8 THE COURT: Hold on, Mr. Adler is to the podium  
9 first.

10 MS. DOW: Oh, sorry.

11 MR. ADLER: Hello, I'm David Adler from McCarter &  
12 English, on behalf of the ad hoc group of borrowers. I just  
13 want to clarify, with respect to the Class 2 ballot, the  
14 retail borrowers. There was not a box there that allowed the  
15 borrowers to make an election as to whether they wished to  
16 repay their loans or not, is that correct?

17 MR. KARPUK: I believe the box for -- you're  
18 talking for the avoidance action settlement?

19 MR. ADLER: I'm talking about under Class 2, the  
20 borrowers are given an option to repay their outstanding  
21 loans.

22 MR. KARPUK: I believe there was an election for  
23 them to request more information.

24 THE COURT: Mr. Adler, I think you raised this  
25 issue, this was discussed earlier in the hearing. And I

1 believe that the Committee agreed to work with you to  
2 provide the opportunity for people to repay their loan.

3 MR. ADLER: Your Honor, I have no further  
4 questions. I just want to clarify the record because there  
5 was a question asked about balloting issues.

6 THE COURT: Okay.

7 MR. COLODNY: Your Honor, I'll clarify. Within the  
8 modified plan that we filed, we said we'd file -- we'd send  
9 an additional notice, and we fixed this kind of confusion in  
10 the --

11 THE COURT: Ms. Jones, do you want to be heard?

12 MS. JONES: Your Honor, Elizabeth Jones with  
13 Kirkland & Ellis. There is a footnote in the ballot when  
14 explaining Class 2 that says we will send out a notice, and  
15 if you would like to elect to either repay or set off, then  
16 we will follow up with that information. So it was clarified  
17 on the ballot.

18 THE COURT: So that's in the process of being  
19 done.

20 MS. JONES: Correct.

21 THE COURT: Okay. Thanks very much. All right.  
22 Ms. Dow, you wanted to question?

23 CLERK: She's no longer raising her hand, Judge.

24 THE COURT: All right.

25 MS. DOW: Hi. Sorry, I'm in a tropical storm, so



1 things are going in and out here. I apologize. I do have one  
2 question.

3 THE COURT: Go ahead.

4 MS. DOW: About, about the voting process and how  
5 much -- how many votes were changed during the voting  
6 process. And people were able to change their votes, we know  
7 that there were disclosure statements rolling out through  
8 the voting period. How many people -- how many votes were,  
9 were changed?

10 MR. KARPUK: I don't have information as to how  
11 many votes were changed. Although if you look at Exhibit C  
12 to the -- my Certification, you can see that -- the list of  
13 amended ballots. So there are 834 amended ballots in Class  
14 2, 2,026 in Class 4, 5,126 in Class 5, 513 in 6 A and 64 in  
15 Class 7. Those are not unique counts because there were --  
16 you know, many accountholders would go through the ballot  
17 process over and over, so . . .

18 MS. DOW: Thank you.

19 THE COURT: Any other questions, Ms. Dow?

20 MS. DOW: Yes, thank you. The question was of  
21 those 834, were they flipping to vote for versus not for the  
22 plan, or were most of the changes the other attributes in  
23 the vote?

24 MR. KARPUK: I did not examine that information.

25 MS. DOW: Thank you very much.

1 THE COURT: Thank you. Anybody else wish to cross-  
2 examine? You're excused.

3 MR. KARPUK: Thank you, Your Honor.

4 MS. SIMSON: I'm going to pass the time to my  
5 colleague.

6 THE COURT: Thank you, Ms. Simson.

7 MS. BRIER: Good afternoon, Your Honor. Grace  
8 Brier, Kirkland & Ellis on behalf of Debtors. At this time,  
9 Debtors call Allison Hoeinghaus to the stand.

10 THE COURT: Thank you very much.

11 MS. BRIER: And Your Honor, may I approach with  
12 the exhibits that we will use with Ms. Hoeinghaus? Thank  
13 you.

14 CLERK: Please raise your right hand. Do you  
15 solemnly swear and affirm that all the testimony you're  
16 about to give before this Court is the truth, the whole  
17 truth and nothing but the truth?

18 MS. HOEINGHAUS: Yes, I do.

19 MS. BRIER: Good afternoon. Can you please  
20 introduce yourself to the Court?

21 MS. HOEINGHAUS: Hi, I'm Allison Hoeinghaus, I'm a  
22 Managing Director at Alvarez & Marsal.

23 MS. BRIER: And Ms. Hoeinghaus, how did you first  
24 become involved in the matters before the Court today?

25 MS. HOEINGHAUS: I was asked to be involved in

1 these cases back in January of this year to advise around  
2 incentive programs for executives and other key employees of  
3 the Debtors.

4 MS. BRIER: And as part of your work on this case,  
5 can you describe the tasks that you performed?

6 MS. HOEINGHAUS: Sure. We were tasked with helping  
7 develop the incentive program, determining what might be  
8 reasonable amounts relative to other Chapter 11 cases, and  
9 what's typical in the Debtors' industry.

10 MS. BRIER: And have you developed incentive  
11 programs before?

12 MS. HOEINGHAUS: Yes, I have.

13 MS. BRIER: Now, were you asked to do anything  
14 else in addition to developing incentive programs?

15 MS. HOEINGHAUS: At this debtor or are you talking  
16 about in general?

17 MS. BRIER: Were you asked to analyze that  
18 incentive program after you developed it?

19 MS. HOEINGHAUS: Yes, it was a collaborative  
20 process where we were actually using the other cases and the  
21 facts and other comparables to actually help develop the  
22 program along the way.

23 MS. BRIER: Now, have you previously analyzed and  
24 offered opinions on incentive programs in other  
25 restructuring cases and in other restructuring contexts?

1 MS. HOEINGHAUS: Yes, I have. For incentive  
2 programs, retention programs, severance and other  
3 compensation matters.

4 MS. BRIER: Now, I'd like to turn to the document  
5 that I handed you earlier. Can you tell us what that  
6 document is?

7 MS. HOEINGHAUS: It's a Declaration I filed on  
8 behalf of the Debtors.

9 MS. BRIER: And for the purposes of the record,  
10 this is Document 3586, previously marked Exhibit 68 by  
11 Debtors. Now, Ms. Hoeinghaus, can you please turn to the  
12 last page of this document? Is that your signature there?

13 MS. HOEINGHAUS: Yes, it is.

14 MS. BRIER: And is this a true and accurate copy  
15 of the Declaration submitted in this case?

16 MS. HOEINGHAUS: Yes, it is.

17 MS. BRIER: Your Honor, at this time, Debtors move  
18 to admit Exhibit 68 into evidence.

19 THE COURT: Any objections? All right, Exhibit 68  
20 is admitted into evidence.

21 (Debtors' Exhibit 68 Received into Evidence)

22 MS. BRIER: Now, Ms. Hoeinghaus, are your  
23 conclusions that you reached about the EIP contained in this  
24 Declaration?

25 MS. HOEINGHAUS: Yes, they are.

1 MS. BRIER: I'd like to discuss a couple of those  
2 today. Do you adopt this Declaration under oath as your  
3 sworn testimony?

4 MS. HOEINGHAUS: Yes, I do.

5 MS. BRIER: Now, at a high level, what is an EIP?

6 MS. HOEINGHAUS: It is an incentive program that's  
7 intended to align the --

8 THE COURT: Just speak a little slower.

9 MS. HOEINGHAUS: Oh, sorry. It is an incentive  
10 program that is intended to align the key executives, their  
11 interests with those of the various stakeholders in this  
12 case. And to really motivate them to perform certain goals  
13 and objectives in this case to get to the best possible  
14 outcome as part of these Chapter 11 cases.

15 MS. BRIER: And what were you asked to analyze in  
16 the EIP in this case?

17 MS. HOEINGHAUS: I was specifically asked to  
18 analyze how it compared to similar other distress  
19 situations. Some particular other cases that have been  
20 approved in Chapter 11 cases. And then also, how it compares  
21 to the Debtors' market where they're competing for talent.

22 MS. BRIER: And did you summarize the results of  
23 those analyses in your Declaration?

24 MS. HOEINGHAUS: Yes, I did.

25 MS. BRIER: Now, to be clear, Ms. Hoeinghaus, did

1 you analyze the performance metrics that are under the EIP?

2 MS. HOEINGHAUS: I did not. My colleague,  
3 Mr. Campagna, who I believe will be testifying later, he is  
4 who actually weighed in on the metrics and where those  
5 performance levels were set.

6 MS. BRIER: So what specifically did you look at?

7 MS. HOEINGHAUS: I specifically looked at the  
8 amounts that were being proposed, how level the number of  
9 participants that were being included, and the overarching  
10 structure of the program.

11 MS. BRIER: Mr. Young, if you could please pull up  
12 our Exhibit 68 and turn to Page 11. I'd like to take a look  
13 at one of the charts on that page. And if you could zoom in  
14 on that chart, that'd be excellent. Ms. Hoeinghaus, does  
15 this summarize one of the analyses that you did in this  
16 matter?

17 MS. HOEINGHAUS: Yes, this analyzes the first  
18 test, the distressed compensation test.

19 MS. BRIER: And in the distressed --

20 THE COURT: This is on Page 11 of her Declaration.

21 MS. BRIER: Yes. Yes, Your Honor. This is Page 11  
22 of Exhibit 68, Docket Number 3586. And can you tell us what  
23 this analysis is showing us?

24 MS. HOEINGHAUS: Sure. It's showing that the  
25 amount being proposed here for the Debtors is very

1 reasonable relative to the peer group of Chapter 11 cases  
2 that have also approved similar type incentive programs. And  
3 specifically you can see here, this analysis we did here is  
4 on an annualized basis. So you can see Debtors are proposing  
5 just shy of 3.5 million, again, on an annualized basis,  
6 which was actually at the 1 percent tile of this peer group  
7 based on target cost.

8 And then we also looked at it to be assured it was  
9 appropriate in terms of the number of participants. So we  
10 looked at the average cost per participant, and you can see  
11 here that the proposal for the Debtors is actually the  
12 lowest at just over \$388,000. And similarly, as we looked at  
13 it as a percent of the total assets, and it was also below  
14 the tenth percentile.

15 MS. BRIER: And just to drill down a bit into what  
16 you are comparing the Debtors to, can you describe what the  
17 comparison is here?

18 MS. HOEINGHAUS: Sure. So my team and I prepared a  
19 peer group of other Chapter 11 cases that had incentive  
20 plans approved in 2017 or later. We focused on non-energy  
21 companies, and then limited those that had prepetition  
22 assets greater than a billion but fewer than 25 executives  
23 to ensure that we were looking at ones that were focused at  
24 the executive level and not rank and file incentive plans.

25 MS. BRIER: You earlier described another analysis

1 that you did, a market rate analysis. Did you summarize that  
2 analysis in your Declaration?

3 MS. HOEINGHAUS: Yes, I did.

4 MS. BRIER: Mr. Young, can you please turn to Page  
5 12 of the Declaration and display the first table there?

6 Ms. Hoeinghaus, can you tell us what you did in the market  
7 rate comparison that you are showing in this table?

8 MS. HOEINGHAUS: Sure. So my team and I pulled  
9 compensation survey data for the various EIP participants  
10 and the various specific roles and responsibilities that  
11 they are fulfilling to the Debtors. And we compared that to  
12 these compensation surveys to provide the market level of  
13 compensation. So essentially the going rate for these  
14 positions at similar sized companies. And you can see here  
15 at the bottom, the -- this is showing currently where the  
16 executives are only working for their base salary. And with  
17 only base salary, since such a large component of executive  
18 compensation is around incentives, absent those incentives,  
19 the base salaries are significantly below market.

20 Under P 25 there, you can see that they're 31  
21 percent below the 25th percentile of the market peer group.  
22 They're approximately 50 percent below the median, and  
23 almost 70 percent below the market P 75.

24 MS. BRIER: Now, based on your finding that these  
25 base salaries are significantly below market, what did you



1 conclude about the EIP?

2 MS. HOEINGHAUS: Concluded that an incentive  
3 program was very much necessary here to ensure that market  
4 levels of compensation would be offered to key executives.

5 MS. BRIER: Finally, I'd like to look at the  
6 analysis you did of market rate, including the incentive  
7 program. And Mr. Young, if you could pull up the last chart  
8 there on Page 12, please. Ms. Hoeinghaus, can you explain to  
9 us what the difference is between the chart we just looked  
10 at and this one?

11 MS. HOEINGHAUS: Sure. So this now includes the  
12 proposed EIP amount, to wit, the total for all of the  
13 executives included here is almost \$6 million. So it's in  
14 addition to the base salary that we just discovered -- or  
15 just discussed. And you can see that with the inclusion of  
16 the EIP, now the market levels of compensation are on  
17 average between the P 25 and P 50 of market, and no  
18 individual is above P 75.

19 MS. BRIER: And can you break that down for us?  
20 What does that mean in kind of plain English?

21 MS. HOEINGHAUS: Sure. So it shows that now  
22 including an EIP, the executives are more in line with  
23 market and within a healthy range of what would be  
24 considered competitive with on average being between, you  
25 know, the 25th percentile of a peer group of different types

1 of companies where they're competing for talent.

2 MS. BRIER: And taking into account those results,  
3 what did you conclude about the EIP overall?

4 MS. HOEINGHAUS: I concluded both on, based on the  
5 distressed analysis of other Chapter 11, as well as the  
6 industry market analysis here that the EIP was very  
7 reasonable in terms of the amounts and the opportunities  
8 that are being offered to the executives here.

9 MS. BRIER: Thank you, Ms. Hoeinghaus. I'll pass  
10 the witness for cross, Your Honor.

11 THE COURT: Debtors' Committee?

12 MR. COLODNY: I have nothing.

13 THE COURT: Ms. Cornell?

14 MS. CORNELL: Good afternoon, Shara Cornell again  
15 on behalf of the Office of the United States Trustee. For  
16 the record, under the EIP, who makes -- strike that. Under  
17 the EIP, are the awards discretionary as to when they will  
18 be received?

19 MS. HOEINGHAUS: No, they're not. They're very  
20 specific metrics that are outlined in the program and in the  
21 Motion before the Court today, that it lays out exactly how  
22 the executives can earn these. And if those metrics are not  
23 satisfied, then the amounts will not be earned under the  
24 program.

25 MS. CORNELL: Under the EIP, is there a discretion

1 as to -- is there any discretion as to how much each award  
2 can be?

3 MS. HOEINGHAUS: No, there's set amounts by  
4 individual.

5 MS. CORNELL: Under the EIP, are the awards  
6 discretionary or mandatory?

7 MS. HOEINGHAUS: They are not discretionary, they  
8 are -- if approved, there are set targets for each  
9 individual.

10 THE COURT: If metrics are met, at measurement  
11 dates, they're entitled to the amounts provided in the  
12 program.

13 MS. HOEINGHAUS: Correct.

14 MS. CORNELL: Are you certain that that is the way  
15 the EIP is currently set up under the revised plan and its  
16 amendments?

17 MS. HOEINGHAUS: Assuming it gets approved, yes.  
18 The structure is already set.

19 MS. CORNELL: Okay. Then that will be something we  
20 will discuss with Debtors, because I believe there's been a  
21 revision to reflect that the --

22 THE COURT: Let's not get into a discussion about  
23 it, okay?

24 MS. CORNELL: Okay. So it's your testimony here  
25 today that if the benchmarks are met, that the EIP awards

1 are mandatory upon the Plan Administrator to be paid out.

2 MS. HOEINGHAUS: I think maybe this might be  
3 better for my colleague, Mr. Campagna, maybe, to weigh in on  
4 the details on that. But that was my understanding.

5 MS. CORNELL: Okay. Thank you.

6 THE COURT: Thank you. Anyone else in the  
7 courtroom? All right. On Zoom, anybody wish to cross-examine  
8 who's on Zoom?

9 MR. VITHANI: Yes, Your Honor. This is Imran  
10 Vithani speaking. How are you?

11 THE COURT: Okay.

12 MR. VITHANI: Ms. Allison, just a quick question  
13 for you. Are you able to share the companies that you were  
14 actually able to do the comparison with? Are there any  
15 examples of companies that you're able to share right now?

16 MS. HOEINGHAUS: Yes. In my Declaration, I can get  
17 the exact paragraph, Paragraph 15 on Page 10 of my  
18 Declaration outlines the specific criteria which we did to  
19 use to develop the peer group and the specific companies are  
20 also listed there.

21 MR. VITHANI: Thank you, ma'am.

22 MS. HOEINGHAUS: Of course.

23 THE COURT: Just give me a second, I'm a little  
24 crowded. All right, any further questions, Mr. Vithani?

25 MR. VITHANI: No, sir. Thank you so much, Judge.

1 THE COURT: All right. Anybody else on Zoom who  
2 wishes to cross-examine?

3 MR. SHEIK: Yes, Your Honor. Just a quick question  
4 for the -- thank you. So, for [indiscernible] I just wanted  
5 to make, you know, a clarification, if you could clarify.  
6 What was the post-petition valuation of CNL illiquid assets  
7 as we enter Chapter 11?

8 MS. BRIER: Objection.

9 THE COURT: Sustained.

10 MR. SHEIK: My questions were really about just  
11 that. So if that's sustained, then I do not --

12 THE COURT: -- for that, Mr. Sheik.

13 MR. SHEIK: Okay. I apologize for that.

14 THE COURT: It's okay. Any other cross-  
15 examination?

16 MR. SHEIK: Thank you.

17 CLERK: Judge, Mr. Cruz has his hand up.

18 THE COURT: Mr. Cruz, go ahead.

19 MR. CRUZ: Yes. Cameron Cruz, Pro Se Creditor.  
20 Three questions. First off, under comparators, how many, if  
21 any, involved financial fraud?

22 MS. HOEINGHAUS: I don't specifically know in  
23 these particular cases.

24 MR. CRUZ: Next question. In establishing your  
25 baseline for Celsius, if you were to subtract out customer

1 deposits, what would the baseline become?

2 MS. BRIER: Objection.

3 THE COURT: Sustained.

4 MR. CRUZ: Finally, in the initial submission for  
5 the incentive program, there was a recommendation for  
6 \$239,000 for Mr. Roni Cohen-Pavon. Could you explain why  
7 he's been taken out and how he initially was included?

8 THE COURT: That's pretty easy, Mr. Cruz. Can you  
9 answer the question?

10 MS. HOEINGHAUS: My understanding is that if  
11 anyone was thought to be having done wrong things, they were  
12 going to be removed from this program.

13 THE COURT: Mr. Pavon was indicted, I believe, did  
14 he plead guilty? Yes, he pled guilty.

15 MR. CRUZ: It was the act -- yes, so it was the  
16 act of him being criminally charged that prompted him being  
17 removed. Was there any --

18 MR. MCCARRICK: Objection.

19 THE COURT: Sustained.

20 MR. CRUZ: All right. That's it for now. Thank  
21 you.

22 THE COURT: Thank you, Mr. Cruz. Anybody else wish  
23 to cross-examine?

24 CLERK: I don't see any hands raised, Judge.

25 THE COURT: All right. Any redirect?

1 MS. BRIER: No, Your Honor.

2 THE COURT: All right. You're excused. Thank you  
3 very much for your testimony.

4 MS. HOEINGHAUS: Thank you.

5 MS. BRIER: Your Honor, Grace Brier, Kirkland &  
6 Ellis on behalf of the Debtors. That concludes the witnesses  
7 we disclosed for today on the docket. We can ask the Court's  
8 preference whether you'd like us to continue or wrap for  
9 today and disclose new witnesses at 5:00 p.m.

10 THE COURT: Let me understand what witnesses --  
11 assuming we're finished for the day, I haven't yet decided -  
12 - who are the witnesses for tomorrow?

13 MS. BRIER: Yes, Your Honor. I believe the UCC has  
14 two witnesses that will be called tomorrow.

15 THE COURT: Well let me ask this. Has the Debtor  
16 put on its case at this point?

17 MS. BRIER: We have one more witness that our --

18 THE COURT: Mr. Campagna.

19 MS. BRIER: Mr. Campagna. And our current plan is  
20 for him to follow the two UCC witnesses.

21 THE COURT: Okay.

22 MS. BRIER: We can reorder that if Your Honor  
23 prefers, but we were going to start with the UCC witnesses.

24 THE COURT: All right. Mr. Colodny?

25 MR. COLODNY: Good afternoon, Your Honor. Aaron

1 Colodny from White & Case on behalf of the Official  
2 Committee. We've exceeded the notice witness. We have  
3 Mr. Robinson, Mr. Delco and Mr. Campagna. Mr. Robinson, I  
4 believe --

5 THE COURT: Is testifying by Zoom.

6 MR. COLODNY: Is testifying by Zoom, and I believe  
7 he could be available this afternoon. But we did not notice  
8 him yesterday.

9 THE COURT: Right.

10 MR. COLODNY: And we would be okay calling him  
11 this afternoon if it fits with Your Honor, if we're not  
12 going to hang over. We can get him done between -- I think  
13 he could be ready by 4:00 p.m., if we can get him on your  
14 window at 4:00 p.m., that would work. Or we would prefer if  
15 he's going to hang over the time, to do it --

16 THE COURT: Sure, sure. Mr. Robinson was  
17 testifying about the selection of the Board members, if I'm  
18 not mistaken.

19 MR. COLODNY: That's correct, Your Honor.

20 THE COURT: And who -- I know there was someone  
21 who wanted to cross-examine him.

22 MR. COLODNY: Mr. Phillips, Your Honor.

23 THE COURT: Mr. Phillips. Mr. Phillips, would you  
24 be prepared to cross-examine this afternoon?

25 MR. PHILLIPS: Your Honor, I would be, provided



1 that you accept the exhibits that I just filed on the docket  
2 now as part of that cross-examination.

3 THE COURT: Sure. Why don't we take a break until  
4 4:00. And I'll get copies of what you filed on the docket.  
5 And I appreciate your willingness to cross-examine this  
6 afternoon, because that was not one of the witnesses who was  
7 noticed for today. Mr. Colodny --

8 MR. PHILLIPS: Should I e-mail a copy of -- I'm  
9 sorry.

10 MR. COLODNY: That's fine with us, Your Honor, as  
11 long as we finish, can finish Mr. Robinson.

12 THE COURT: I can't imagine that we're not going  
13 to finish Mr. Robinson.

14 MR. COLODNY: Okay.

15 THE COURT: And again, I have another hearing at  
16 5:00, so we'll -- I'd be very -- I've read his direct  
17 examination, his written direct, and so you can put in  
18 whatever background quickly you want to do for him, and then  
19 we'll turn him over for cross.

20 MR. COLODNY: Sounds great.

21 THE COURT: Okay. All right, so we'll -- go ahead.

22 MR. PHILLIPS: Mr. Colodny, would you like me to  
23 e-mail you those exhibits?

24 MR. COLODNY: If they're on the docket I can get  
25 them from there.

1 THE COURT: It's on the docket, Mr. Phillips?

2 MR. PHILLIPS: I used the pro se uploader tool  
3 which doesn't immediately publish onto the docket, unlike  
4 the [indecipherable]

5 THE COURT: If you could, why don't you e-mail it  
6 to Mr. Colodny. Okay?

7 MR. PHILLIPS: I'll be happy to, thank you.

8 THE COURT: All right.

9 MR. COLODNY: Thank you, Your Honor.

10 THE COURT: So we'll be in recess until 4:00.

11 MR. COLODNY: Okay.

12 (Whereupon the proceedings were paused for a  
13 break.)

14 THE COURT: All right. I believe we're going to  
15 begin with the testimony of Major Robinson. Is that correct?

16 MR. WEEDMAN: Correct, Your Honor. Good afternoon.  
17 This is Joshua Weedman of White & Case, LLP on behalf of the  
18 committee.

19 THE COURT: Okay.

20 MR. WEEDMAN: The committee calls Mark Robinson.

21 THE COURT: All right, Mr. Robinson. If you would  
22 raise your right hand, you will be sworn.

23 (Whereupon the witness was sworn in.)

24 THE COURT: All right. Please have a seat.

25 MR. WEEDMAN: And, Your Honor, before we begin,

1 Mr. Robinson would just like me to note he is currently on  
2 active duty, and therefore, in his fatigues. But he is only  
3 appearing in his personal capacity --

4 THE COURT: I understand that.

5 MR. WEEDMAN: -- and not representing the United  
6 States Army today.

7 THE COURT: Thank you.

8 MR. WEEDMAN: And Your Honor, for the witness  
9 kits, I have a copy of his declaration. May I approach,  
10 please?

11 THE COURT: Yes, please. And I think I indicated  
12 before that I have read it already.

13 MR. WEEDMAN: And, Mr. Robinson, could you please  
14 state your name for the record?

15 MR. ROBINSON: Yes. My name is Mark Robinson.

16 MR. WEEDMAN: And is it okay if I call you Mr.  
17 Robinson today, or do you prefer to be called something  
18 else?

19 MR. ROBINSON: Certainly, yeah. You can call me  
20 Mark, Mr. Robinson, whatever works for you.

21 MR. WEEDMAN: And, Mr. Robinson, where are you  
22 located right now?

23 MR. ROBINSON: I'm currently located in my office  
24 at Fort Knox, Kentucky.

25 MR. WEEDMAN: And, sir, can you please confirm

1 that there is no other person in the room with you right  
2 now?

3 MR. ROBINSON: I am by myself.

4 MR. WEEDMAN: And, Mr. Robinson, what's your  
5 current job?

6 MR. ROBINSON: Yeah. I'm currently a Chief of  
7 Military Justice at the Fort Knox Consolidated Military  
8 Justice office.

9 MR. WEEDMAN: And, Mr. Robinson, are you a member  
10 of the UCC in these proceedings?

11 MR. ROBINSON: I am.

12 MR. WEEDMAN: And since when have you had that  
13 role?

14 MR. ROBINSON: Since July 2022.

15 MR. WEEDMAN: As part of your role in the UCC,  
16 did you have any role in the board selection process for the  
17 NewCo?

18 MR. ROBINSON: I did.

19 MR. WEEDMAN: All right. And, sir, could you  
20 please generally describe what your role was in that board  
21 selection process?

22 MR. ROBINSON: Yeah. So my role as a UCC member  
23 was to review applicants, material, CVs, conducted  
24 interviews. We had discussions with and without our advisors  
25 to vote on and to select board members for the NewCo.

1 MR. WEEDMAN: And, sir, do you have your  
2 declaration that you provided in this case in front of you?

3 MR. ROBINSON: I do.

4 MR. WEEDMAN: And is that document 3584?

5 MR. ROBINSON: Yes.

6 MR. WEEDMAN: And can you please turn to page 9  
7 of that document? And are you there, sir?

8 MR. ROBINSON: Yes.

9 MR. WEEDMAN: And is that your signature on this  
10 page?

11 MR. ROBINSON: Yes.

12 MR. WEEDMAN: And do you understand that this is  
13 your testimony that you are providing in this confirmation  
14 hearing under oath?

15 MR. ROBINSON: Yes.

16 MR. WEEDMAN: And finally, sir, do you have a  
17 copy of a limited objection and reservations of rights of  
18 Rick Phillips that was filed in these proceedings?

19 MR. ROBINSON: Yes, sir.

20 MR. WEEDMAN: And do you have that with you  
21 today?

22 MR. ROBINSON: I do.

23 MR. WEEDMAN: Thank you, Your Honor. I pass the  
24 witness.

25 THE COURT: All right. Mr. Phillips, do you wish

1 to examine?

2 MR. PHILLIPS: Yes, Your Honor, I do. Major  
3 Robinson, how are you doing today? I wanted to first thank  
4 you for your service on the UCC, which I know it has been a  
5 volunteer job and entails many hours, as well as thank you  
6 for your service to our country.

7 MR. ROBINSON: Thank you, sir.

8 MR. PHILLIPS: As I looked over your declaration,  
9 in paragraph 4, you state that you, you know, your  
10 participation in the UCC included participating in  
11 comparative [indiscernible] due process that occurred during  
12 the course of the bankruptcy, correct?

13 MR. ROBINSON: Yes.

14 MR. PHILLIPS: Were you involved, and did you  
15 actually personally attend the auction that took place over  
16 April and May in New York, I believe?

17 MR. ROBINSON: No, sir. I was not there in person,  
18 but I had a lot of meetings about it.

19 MR. PHILLIPS: So you participated in Zooms or  
20 conference calls regarding with the proceedings in real  
21 time?

22 MR. ROBINSON: Yes, sir. Well, I didn't, as it was  
23 going on, yes, sir, we had meetings throughout the auction  
24 process.

25 MR. PHILLIPS: Thank you. Did you participate in

1 the decision to select Fahrenheit as the ultimate winner of  
2 that auction?

3 MR. ROBINSON: I did.

4 MR. PHILLIPS: Okay. Can you describe who was  
5 involved in that decision?

6 MR. ROBINSON: The members of the UCC were.

7 MR. PHILLIPS: Were there any advisors involved in  
8 that decision?

9 MR. ROBINSON: They advised us, but we were the  
10 ones who voted and made the decision. So, certainly yes, we  
11 had plenty of meetings with our advisors. We discussed it  
12 numerous times throughout the process. And then we had lots  
13 of external meetings as well. Ultimately, the members of the  
14 UCC decided to select Fahrenheit.

15 MR. PHILLIPS: Were there any particular advisors  
16 who were vocal in their recommendations in that process?

17 MR. WEEDMAN: Objection, Your Honor.

18 THE COURT: Overruled.

19 MR. ROBINSON: I apologize. It was a, no, there  
20 wasn't any particular, anything that stood out. There were  
21 splits among the advisors and there were diverse opinions,  
22 which was very helpful for us to balance and weigh our  
23 options.

24 MR. PHILLIPS: Do you remember or recall if any  
25 particular advisors were strongly in favor of Fahrenheit?

1 THE COURT: Let me just, before he answers that,  
2 can you tell me who the advisors were? I'm particularly  
3 interested whether there were any lawyers and whether you  
4 received legal advice, because, in which case, there may  
5 well be attorney-client privilege involved. So before you  
6 get into who said what to whom, could you tell me who were  
7 the advisors that you refer to, Major Robinson?

8 MR. ROBINSON: Yes, sir. The advisors we are  
9 referring to are a mix of lawyers from White & Case, and  
10 some advisors from Sparello [ph], but they were all, or had  
11 many meetings where there were joint parties'  
12 representatives.

13 THE COURT: All right. So we'll go ahead with the  
14 questioning and when the questions are asked, we'll see  
15 whether the committee has any attorney-client privilege  
16 objections to make. Not saying that there would be a valid  
17 one, but I want to be sure you don't answer before they have  
18 a chance to say whatever they're going to say, OK? Go ahead.

19 MR. ROBINSON: Yes, Your Honor.

20 MR. PHILLIPS: To help on that, Your Honor, may I  
21 just request that , the witness his response to any advisors  
22 from the financial advisory side as opposed to the --

23 THE COURT: Well, let him answer the question, Mr.  
24 Phillips. If the lawyers --

25 MR. PHILLIPS: Okay.



1 THE COURT: -- were present, it may well be that  
2 attorney-client privilege applies. Attorney-client privilege  
3 would not be waived because the committee had its financial  
4 advisors present as well. So ask your questions. We'll see  
5 whether the committee has any objections.

6 MR. PHILLIPS: Okay. I believe I asked it. So  
7 basically, were there any particular advisors who were  
8 strongly in favor of selecting Fahrenheit or NovaWulf at the  
9 end of the auction?

10 MR. WEEDMAN: Objection, Your Honor. The question  
11 calls for privileged communications between White & Case and  
12 its financial advisors.

13 THE COURT: Well, it may or may not --

14 MR. WEEDMAN: It also reflects [indiscernible]

15 THE COURT: -- because if it's business advice  
16 it wouldn't. If it's legal advice that was being given, it  
17 may well. So, Major Robinson, can you separate out whether  
18 the advice you received, whether you consider it to be legal  
19 advice or discussion of the business issues?

20 MR. ROBINSON: Yes, Your Honor.

21 THE COURT: Go ahead.

22 MR. ROBINSON: Yeah. So to answer Mr. Phillips'  
23 question, I don't recall any particular financial advisors  
24 that were particularly strong for Fahrenheit. I know that I  
25 did have conversations with lawyers present, without the

1 lawyers present, with our financial advisors. I had numerous  
2 conversations with advisors in the process. But I don't  
3 recall one like really pushing Fahrenheit specifically. It  
4 was a very challenging and tough decision. The reason why  
5 the auction took so long is both bidders were very good and  
6 the process, through the bidding process, the bids changed  
7 and we got better. And so, it was a, it was not a  
8 necessarily easy decision. And I don't recall a particularly  
9 strong push by financial advisors for Fahrenheit.

10 MR. PHILLIPS: Thank you. And you had also  
11 mentioned here that you were involved in the selection of  
12 the Litigation Oversight Committee.

13 MR. ROBINSON: Yes.

14 MR. PHILLIPS: In paragraph 4.

15 MR. ROBINSON: Yes.

16 MR. PHILLIPS: I believe that you were one of the  
17 appointees?

18 MR. ROBINSON: Yes, sir.

19 MR. PHILLIPS: Did that, does that mean that you  
20 recused yourself from the selection of the other members?

21 MR. ROBINSON: No, sir. I recused myself from the  
22 selection for my selection, whether or not I would get a  
23 seat on the Litigation Oversight Committee.

24 MR. PHILLIPS: And what exactly do you mean that you recused  
25 yourself from your selection as opposed to the other

1 members?

2 MR. ROBINSON: Well, sir, I didn't vote on whether  
3 or not I would be one of them or not. The rest of the  
4 committee made a decision to put me on it. So I did not have  
5 a vote in whether or not, I, I raised my hand, I volunteered  
6 to be on it. I submitted my name for consideration. But I  
7 did not, I did not get a vote on myself.

8 MR. PHILLIPS: All right so you didn't vote but  
9 you were involved in discussions of the, of the Litigation  
10 Oversight Committee members?

11 MR. ROBINSON: Yes, sir, I, and yes.

12 MR. PHILLIPS: Okay. And can you, were you  
13 involved in discussions to appoint Keith Noyes?

14 MR. ROBINSON: I was.

15 MR. PHILLIPS: What was your knowledge of the  
16 status of Keith Noyes at the time he was appointed to  
17 Litigation Oversight Committee?

18 MR. ROBINSON: At the time that we selected him  
19 for a position on the Litigation Oversight Committee, my  
20 understanding is that he is a member of the UCC.

21 MR. PHILLIPS: Were you, was it your understanding  
22 that he was a member of the UCC as a representative of  
23 Covario?

24 MR. ROBINSON: Yes.

25 MR. PHILLIPS: Were you aware that Covario had

1 filed for insolvency?

2 MR. ROBINSON: I was.

3 MR. PHILLIPS: Were you aware that Covario had not  
4 been in contact with the UCC apparently for nine months per  
5 what I learned at the emergency hearing last Friday?

6 MR. WEEDMAN: Objection, Your Honor.

7 THE COURT: Sustained.

8 MR. PHILLIPS: What, what was your knowledge of  
9 the relationship between Covario and Keith Noyes at the  
10 time, at that time that he was appointed to Litigation  
11 Oversight Committee?

12 MR. ROBINSON: My knowledge was that they're still  
13 in contact with them or creditors to some extent. But I  
14 don't have, I don't have any personal knowledge of, of it. I  
15 don't recall any conversations that we had about it.

16 MR. PHILLIPS: When did you first become aware of  
17 this issue of Covario, its insolvency, and Keith Noyes  
18 eventual removal from UCC?

19 MR. ROBINSON: Well --

20 THE COURT: I ask what relevance this has, Mr.  
21 Phillips, anything that we're considering?

22 MR. PHILLIPS: Well, I, I think it goes to this  
23 issue of, you know, whether, you know, honestly, White &  
24 Case was hiding the ball on some issues, because it seemed  
25 like from the hearing on Friday that Mr. Pesce was aware of

1 these things. But I'm trying to understand whether the UCC  
2 members were aware of these things when these decisions were  
3 made.

4 THE COURT: I still don't understand what relevance  
5 that has to the issues that you're, you want, that are  
6 properly before the court.

7 MR. PHILLIPS: Well, I guess the issue that I'm  
8 probing at is, you know, the UCC's independence in, in  
9 actually acting on its own versus acting at the behest of  
10 White & Case.

11 THE COURT: Go on with your questions for now.

12 MR. PHILLIPS: Okay. And, and were you aware of  
13 the other members of the Litigation Oversight Committee; I  
14 believe there are two [indiscernible], I forget the other  
15 person's name, that they were former law partners of White &  
16 Case when you appointed them to Litigation Oversight  
17 Committee?

18 MR. WEEDMAN: Objection, Your Honor, it seems  
19 that's not in the record.

20 THE COURT: Sustained.

21 MR. PHILLIPS: I thought that was in Mr. Pesce's  
22 Declaration of Disinterestedness that was filed on the  
23 docket.

24 THE COURT: I don't know.

25 MR. COLODNY: Mr. Pesce's Declaration 9 that is,

1 Your Honor.

2 THE COURT: I'm going to permit the question.  
3 Go ahead, let's get this, let's get on with this. I'm not  
4 sure what relevance this has to any of it, but go ahead.  
5 What is your challenge, Mr. Phillips?

6 MR. PHILLIPS: Like I said, I, I'm trying to probe  
7 this issue of whether the -

8 THE COURT: Just tell, tell me what your  
9 objection is. I want to know why we're going through this  
10 exercise.

11 MR. PHILLIPS: Because I want, I want the UCC  
12 selections of the Litigation Oversight Committee and the  
13 board to be, you know, the issue in whether it was their  
14 selection or White & Case's. Because, you know, my objection  
15 whether it is potential malpractice on the part of White &  
16 Case.

17 THE COURT: Ask your next question.

18 MR. PHILLIPS: Thank you. So in paragraph seven,  
19 you, you say the board you had an open process to identify  
20 potential new board committee members. And then you had  
21 approximately 45 candidates that were considered in that  
22 process. Do you remember approximately or approximately what  
23 fraction were, you know, from corporate open process versus  
24 were recommended by White & Case, versus were recommended by  
25 Perella Weinberg?

1 MR. ROBINSON: I don't recall off the top of my  
2 head what fraction it was. I know we had some recommended to  
3 us from our financial advisors, our legal advisors, from  
4 Fahrenheit themselves. But I don't, I don't recall the  
5 percentage breakdown.

6 MR. PHILLIPS: Okay, and do you remember how many  
7 candidates were actually interviewed of those 45?

8 MR. ROBINSON: I want to say we interviewed 19,  
9 18. That's in my declaration, I believe. What paragraph was  
10 it? I believe it was 19 that we interviewed.

11 MR. PHILLIPS: Okay. And did you participate in  
12 all 19 of those interviews? I realize they were all  
13 recorded, but did you participate in those?

14 MR. ROBINSON: No, sir. I participated in as many  
15 as I could but I was not able to make all 19.

16 MR. PHILLIPS: And approximately how many was  
17 that?

18 MR. ROBINSON: I want to say nine to twelve or so.

19 MR. PHILLIPS: Okay.

20 MR. ROBINSON: And when --

21 MR. PHILLIPS: I'm sorry.

22 MR. ROBINSON: Yeah, in person, like on Zoom where  
23 I was asking questions.

24 MR. PHILLIPS: In paragraph eight you mention that  
25 there were there committee candidates, and we know that Mr.

1 DiFiore and Mr. Duffy were two of them. Who was the third?

2 MR. ROBINSON: I believe Keith Noyes.

3 MR. PHILLIPS: Okay. And you also say here in your  
4 declaration that they recused themselves from the  
5 deliberation. So does that mean they did, that they did not  
6 participate in the interviews or the seconds, or that, did  
7 they solely recuse themselves from the vote?

8 MR. ROBINSON: They recused themselves from the  
9 discussions of, of their positions and, but they were  
10 participating in the other, the other independent or other  
11 board positions. But they did not vote on themselves. And we  
12 kind of, so first, the way the process works, we first  
13 selected how many creditors who really wanted, wanted onto  
14 the board. And then they did not participate in those votes.

15 MR. PHILLIPS: Okay, well you're, you're going to  
16 make me jump now to that process, which I think you, you had  
17 in paragraph 14 of your declaration. And I guess before we  
18 get to 14, what was the paragraph 13, which discusses the  
19 increase of the size of the board from seven to nine. Why  
20 did you choose to increase the size of the board from seven  
21 to nine?

22 MR. ROBINSON: We chose to increase the size of  
23 the board to nine based on further consideration of the  
24 amount of work and that the board would be asked to do,  
25 getting NewCo out of bankruptcy on its feet and then going



1 public. And just the kind of experience and skill sets of  
2 what we wanted on the board, we figured, we decided it's in  
3 the best interest to increase the size of the board,  
4 primarily because of the workload.

5 MR. PHILLIPS: Okay. And when you did that  
6 increase you realized that the ratio of UCC appointees to  
7 Fahrenheit appointees decreased from 2.5 to 1 to 2 to 1?

8 MR. ROBINSON: Yes, we were very aware of that.

9 MR. PHILLIPS: So, so why in increasing the size  
10 of the board and you know desiring to have more bandwidth,  
11 didn't you increase it to 11 so that you could maintain that  
12 ratio? And again, I mean I'm looking at it from the UCC side  
13 to the one appointee from the Fahrenheit side.

14 MR. ROBINSON: Right. No, I think that the, the  
15 board size of nine was appropriate. We decided it was  
16 appropriate for the amount of work. We discussed the voice,  
17 I mean the ratio. We felt that the board members that we  
18 appointed, that they would be able to provide the necessary  
19 oversight and voice for creditors and future shareholders to  
20 kind of balance and oversight, provide oversight for  
21 Fahrenheit. So we didn't think that it was necessary to go  
22 to 11.

23 MR. PHILLIPS: And the balance, any concern?

24 MR. ROBINSON: It was definitely something we  
25 considered, but it ultimately we felt like nine was the

1 right fit.

2 MR. PHILLIPS: Were you expecting Fahrenheit to  
3 appoint any particular person to their third additional seat  
4 in expansion to nine?

5 MR. ROBINSON: No.

6 MR. PHILLIPS: Okay. Now, now you had mentioned  
7 and also it's, it's in the plan supplement. I think it's  
8 exhibit E, and supplement D it might have been amended set  
9 of exhibits that when you look at this new, new board  
10 structure of having six UCC appointees that you determined  
11 that only two should be prepetition creditors including  
12 committee members. Correct?

13 MR. ROBINSON: Yes, sir.

14 MR. PHILLIPS: Okay, and I think that's in  
15 paragraph 14 of your declaration.

16 MR. ROBINSON: Yes, sir.

17 MR. PHILLIPS: And then you have four that are,  
18 and I have to read the wording here so hang on a second  
19 while I look for it. But you had four that were, were  
20 independent direct is what it was characterized as. So, so  
21 help me understand this because I really don't.

22 THE COURT: Leave your editorial comments out  
23 of this, please. Ask your questions.

24 MR. PHILLIPS: Okay. So, as I understand it, the  
25 agreement with Fahrenheit allowed you to make four

1 unilateral selections to the NewCo Board of Directors.

2 Correct?

3 MR. ROBINSON: Yes, sir.

4 MR. PHILLIPS: And only two that were subject to  
5 the mutual consent of Fahrenheit?

6 MR. ROBINSON: Yes.

7 MR. PHILLIPS: And why did you then choose to have  
8 only two prepetition creditors including UCC members and  
9 "four independent directors?"

10 MR. ROBINSON: Yeah, so we had a lot of discussion  
11 about this. And we were trying to complete the balance  
12 competing interests. We knew that it was important for  
13 creditors to have a voice. And the experience that creditors  
14 brought to the, to the new board would be very important for  
15 applying oversight to the [indiscernible]. At the same time,  
16 we wanted creditors with previous experience and on public  
17 boards and we wanted to balance the necessary for outside  
18 professional experience with experience with Celsius or with  
19 creditor experience. And so balancing those and competing  
20 interests, we decided that having two creditor, reserved  
21 just for creditors, was important, so the creditors still  
22 making a very important voice in NewCo going forward. And at  
23 the same time with the independent creditors or independent  
24 board members we selected. All of our, our interview process  
25 was questioning each of them on their capabilities and

1 ability to advocate for soon-to-be shareholders, creditors,  
2 that they would provide an outside oversight necessary for  
3 Fahrenheit and for NewCo to be successful. We wanted to make  
4 NewCo have the best chance at success, and so that's why we  
5 kind of just settled on that balance.

6 MR. PHILLIPS: Did you believe that no, um,  
7 creditors other than the two UCC members could fill those  
8 roles?

9 MR. ROBINSON: We felt that those two were the  
10 best for the two roles. Other people could, but they weren't  
11 the best for it.

12 MR. PHILLIPS: Okay, but that wasn't my question.  
13 My question was, were there any other creditors who were  
14 qualified to fill that role on the NewCo board besides the  
15 two UCC members?

16 MR. ROBINSON: Yeah, I would say we interviewed a  
17 lot of really qualified candidates.

18 MR. PHILLIPS: Were they all, were there any  
19 creditors --

20 MR. ROBINSON: Yeah, there were other qualified --

21 MR. PHILLIPS: Okay, and were there any creditors  
22 that had more world experience than Mr. Duffy or Mr.  
23 DiFiore?

24 MR. ROBINSON: I'm trying to recall candidates  
25 right now. I think there may have been.

1 MR. PHILLIPS: And why weren't they selected?

2 MR. ROBINSON: Well, in the review of all the  
3 materials that each applicant submitted along with their  
4 interviews, resumes, certainly we had a lot of experience  
5 with Tom and Scott, right. We've been on UCC for a long time  
6 with them. There is a fair amount of trust. And we, the four  
7 of us, we voted on it. We're cognizant of the fact that we  
8 did not want to have a subconscious bias just because we had  
9 worked with them. And so we had a very deliberative process  
10 of speaking with advisors and discussing amongst ourselves  
11 which of the creditor candidates were the best qualified.  
12 And ultimately, we decided that Tom and Scott would be best  
13 qualified.

14 MR. PHILLIPS: And why weren't any of those  
15 creditors qualified any of the "four independent director  
16 slots?"

17 MR. ROBINSON: I never said they weren't  
18 qualified.

19 MR. PHILLIPS: So there were, there were some  
20 creditors that would qualify for the independent director  
21 slots?

22 MR. WEEDMAN: Objection, that's been answered  
23 three times now.

24 THE COURT: Sustained.

25 MR. PHILLIPS: Okay.

1 THE COURT: Wrap it up --

2 MR. PHILLIPS: So again, okay. Well, I got a  
3 couple of pieces of evidence or exhibits that I, I wanted to  
4 ask you about regarding my own candidacy. --

5 THE COURT: Now, Mr. Phillips, this is not a  
6 hearing for a disgruntled person not selected for a  
7 committee. If you have any more questions, ask them. Let's  
8 get it over with, because I view everything you're asking as  
9 a disgruntled person who was not selected. That's not the  
10 purpose of this hearing.

11 MR. PHILLIPS: Your Honor, I'm merely asking why  
12 creditors --

13 THE COURT: Ask your next question, Mr.  
14 Phillips, or you're over.

15 MR. PHILLIPS: Okay. So in selecting Mr. Aidoo for  
16 the committee, did he have any prior board experience?

17 MR. ROBINSON: I don't recall the specifics of his  
18 prior board experience.

19 MR. PHILLIPS: In selecting Mr. Aidoo for the  
20 committee, you said you were aware of his tax issues. What  
21 impact did you think his tax issues would have on the  
22 confidence of NewCo equity investors in the future when they  
23 were evaluating whether or not to purchase stock?

24 MR. WEEDMAN: Objection, Your Honor.

25 THE COURT: Sustained.

1 MR. PHILLIPS: What impact did you think Mr.  
2 Aidoo's tax issues would have?

3 MR. WEEDMAN: Objection, Your Honor.

4 THE COURT: Sustained.

5 MR. PHILLIPS: Are you familiar with NASDAQ Rule  
6 5605 (a) (2) regarding independent directors?

7 MR. ROBINSON: Can you, can you refresh my  
8 recollection? I may have heard it in a discussion but I  
9 don't want to misspeak.

10 MR. PHILLIPS: Sure. NASDAQ Rule 5605, uh, defines  
11 board of directors and (a) (2) essentially deals with who is  
12 an independent director. And so you said in your declaration  
13 that you considered independence and diversity as part of  
14 the qualifications for directors, correct?

15 MR. ROBINSON: Yes, sir.

16 MR. PHILLIPS: Okay. NASDAQ Rule 5605(a) (2) (B) says  
17 a director who accepted or has a family member who has  
18 accepted any --

19 THE COURT: Mr. Robinson, did you consider that  
20 NASDAQ release in your deliberations, yes or no?

21 MR. ROBINSON: I believe so. Yes, Your Honor.

22 THE COURT: All right go ahead.

23 MR. PHILLIPS: Okay in paragraph 9 I believe you  
24 stated that. It's and so it, in 5605(a) (2) (B) it says a  
25 director who accepted or who has a family member who accepts

1 any compensation from a company in excess of \$120,000 during  
2 any period of 12 consecutive months within the three years  
3 preceding a determination of independence, that is involved  
4 which has the three minor exceptions. Did you consider  
5 whether or not Mr. Aidoo met the requirements including  
6 NASDAQ Rule 5605(a)(2)(B) for being an independent director?

7 MR. WEEDMAN: I'm going to object to the question  
8 to the extent he's asking about a NASDAQ regulation that's  
9 not before the witness and we can't verify.

10 THE COURT: Sustained.

11 MR. PHILLIPS: Did you consider whether or not Mr.  
12 Aidoo met the requirements, as we stated here the NASDAQ  
13 requirements, for boards of directors including in respects  
14 to independency and diversity?

15 MR. ROBINSON: Yes, sir.

16 MR. PHILLIPS: And you determined that he did?

17 MR. ROBINSON: Yes, sir.

18 MR. PHILLIPS: Do you believe that all six  
19 directors selected by the UCC met the requirements of  
20 independence?

21 MR. ROBINSON: Yes, sir.

22 MR. PHILLIPS: Okay. So why did you make the  
23 distinguishment between prepetition creditors and  
24 independence directors if all six met the requirement of  
25 independence?



1 MR. ROBINSON: I'm confused. Can you, can you  
2 re --

3 MR. PHILLIPS: Yeah, so, so, so your testimony is  
4 that the UCC decided to have two prepetition creditors and  
5 four independent creditors. And then you just said that all  
6 six met the requirements of the independent creditors. So,  
7 why did you split the requirement between two prepetition  
8 creditors and four independent directors when all six were  
9 actually independent directors?

10 MR. WEEDMAN: Objection, Your Honor, he, I think  
11 he's misstating the witness's testimony.

12 THE COURT: Overruled. Are you able to answer  
13 that question?

14 MR. ROBINSON: I'm sorry?

15 THE COURT: Are you able to answer that  
16 question, Mr. Robinson, Major Robinson?

17 MR. ROBINSON: I, I think that I may be, so when  
18 we were discussing the NASDAQ requirements, I wasn't  
19 necessarily reading the, like the by-number statute of what  
20 the NASDAQ required. We were advised on what the NASDAQ  
21 required and whether or not we, we discussed whether or not  
22 what candidate meet that, met those requirements. We  
23 certainly asked questions. We relied on legal advice. And  
24 the, my understanding is that, that nobody would be  
25 prohibited from serving on, my, no one would be prohibited

1 on the NASDAQ requirements. I'm sorry to [indiscernible] for  
2 it. So maybe I'm just misunderstanding what Mr. Phillips was  
3 asking.

4 MR. PHILLIPS: I'm asking why you split between  
5 the two prepetitioned and four independent and all six were  
6 actually independent?

7 MR. ROBINSON: Maybe I'm misspeaking when I'm  
8 saying independent because I'm not sure if I'm using the  
9 word independent properly there. So I, I would say that all  
10 six are, one of the, when I say independents but met  
11 requirements for that. And at that point I'm [indiscernible]  
12 I'm not aware of anything from the NASDAQ requirements that  
13 would prohibit any of the candidates from serving.

14 MR. PHILLIPS: In paragraph 11 of your declaration  
15 you talk about Mr. Aidoo's relationship with, relationship  
16 with Perella Weinberg. Do you have personal knowledge of his  
17 current status as an employee or not an employee for Perella  
18 Weinberg?

19 MR. ROBINSON: Not personal knowledge in terms of  
20 that. I haven't called his company and asked them.

21 MR. PHILLIPS: So, the statement that he'll be  
22 stepping down from his executive director position at  
23 Perella Weinberg is based on what?

24 MR. ROBINSON: Information I was told.

25 MR. PHILLIPS: So it's kind of hearsay?

1 MR. WEEDMAN: Objection. Form.

2 THE COURT: Sustained.

3 MR. PHILLIPS: So who told you that information?

4 MR. ROBINSON: My advisors. Our, our advisors.

5 MR. PHILLIPS: Okay.

6 MR. ROBINSON: Yes.

7 MR. PHILLIPS: And then, um, with regards to the  
8 background investigation. Let me go back, back here just for  
9 a second to allow me, I'll be finishing up quickly here,  
10 Your Honor. Um, you, you mentioned in here that in paragraph  
11 ten that the committee authorized counsel on prior  
12 independent investigator to conduct comprehensive background  
13 checks on certain candidates. Do you know how many  
14 candidates that, that was, the background checks were  
15 conducted on?

16 MR. ROBINSON: I think it was around ten.

17 MR. PHILLIPS: Okay. And then if I could direct  
18 you to the amendment that, which is from the plan supplement  
19 on Page 51 of 170, Docket Number ECCF 3444, the new board of  
20 directors?

21 MR. WEEDMAN: Your Honor, if I may, uh, Mr.  
22 Phillips had indicated he was going to circulate this  
23 information and he, we didn't receive it prior to, to this  
24 hearing.

25 THE COURT: I did.

1 MR. WEEDMAN: Oh, I don't think that we did, and  
2 the witness doesn't have it in front of him.

3 MR. PHILLIPS: I did send it to Aaron, Aaron  
4 Colodny's email prior to the, this beginning.

5 MR. COLODNY: I think I got it three minutes  
6 before, Your Honor. And it's Exhibit B from Docket  
7 [indiscernible]. But I am not sure if Mr. Robinson knows.

8 THE COURT: Well, there is specific language in  
9 it, Mr. Phillips that you want to ask him about, just read  
10 it to him slowly.

11 MR. PHILLIPS: Sure. I'm going to read you the  
12 third paragraph of it. And it says to facilitate the  
13 committee's final selection, the committee's legal and  
14 financial advisors assembled recommended elected board  
15 questionnaires, conducted interviews with perspective board  
16 members along with the committee members and hired an  
17 independent investigator to conduct comprehensive background  
18 checks on candidates who all agreed to the investigation. So  
19 I'm a little confused because this seems to me that saying  
20 that there were --

21 THE COURT: I don't care whether you're  
22 confused. If you have a question, ask him a question.

23 MR. PHILLIPS: Okay, so it's, were the background  
24 checks conducted on all candidates who agreed to the  
25 investigations or on only nine candidates?

1 MR. ROBINSON: I'm --

2 MR. COLODNY: Your Honor, objection, Your Honor.

3 THE COURT: Overruled.

4 MR. ROBINSON: I believe every candidate we did  
5 the background check on agreed to it. I don't think we did  
6 any that were, but I, I could be mistaken.

7 MR. PHILLIPS: Do you know the identities of what  
8 candidates had background checks on, and can you, can you  
9 state which ones you remember?

10 MR. ROBINSON: I don't recall all ten off the top  
11 of my head. Uh, I know that everybody was selected or, had a  
12 background check and I know there were several others. But I  
13 can name a few if you want me to.

14 MR. PHILLIPS: Yes, please do.

15 THE COURT: I don't want you to name any of  
16 them.

17 MR. PHILLIPS: All right, thank you, Your Honor.  
18 I have no further questions.

19 THE COURT: Any, redirect?

20 MR. WEEDMAN: One, one question here.

21 THE COURT: Go ahead.

22 MR. WEEDMAN: So if there are any, are there any  
23 other cross examiners? I need, need to --

24 THE COURT: Does anybody else wish to cross  
25 examine?

1 THE CLERK: Sam-, Sami Sheik is on the line,  
2 Judge.

3 THE COURT: Go ahead, Mr. Sheik.

4 MR. SHEIK: Can you hear me? Thank you, Your  
5 Honor. Sir, if, would you, when it comes to Asher  
6 Jenoot, were you aware that there was a SEC fine that was  
7 levied on him and his organization, USBTC before his  
8 addition to the board or the, you know to the board?

9 MR. WEEDMAN: Objection, assumes facts not in  
10 record.

11 THE COURT: I'm sorry?

12 MR. WEEDMAN: Assumes facts in record.

13 THE COURT: Well, do you know whether that's  
14 the case or not, Major Robinson? Don't, don't assume the,  
15 that the question is correct, but do you have knowledge  
16 about that alleged fact?

17 MR. ROBINSON: No, Your Honor.

18 THE COURT: Okay. Sustained.

19 MR. SHEIK: Okay. Thank you. And final  
20 question, when, when deciding to go from seven to nine  
21 individuals on this board, or this committee, rather, and in  
22 assessing the value of that let's say Fahrenheit would be  
23 bringing into this, you had mentioned earlier that, you  
24 know, that you needed to increase that number because there  
25 was that much work to be done. How did you go about

1 determining, you know, that assessing their value and, and  
2 you know coming to the conclusion that you would need to  
3 increase the number of positions to nine board members as  
4 opposed to seven, given that there is a bunch of people will  
5 be introduced into this board that will all come with a  
6 heavy cost to the estate?

7 MR. WEEDMAN: Objection Your Honor.

8 THE COURT: Sustained.

9 MR. SHEIKH: And how --

10 THE COURT: One more question.

11 MR. SHEIKH: Sure, I, I'm trying to gather my  
12 thoughts on this one, Your Honor. Please bear with me. How  
13 is the, uh, the, okay so was there a job description or a  
14 process formally rolled out to the creditors to apply for a  
15 position on the board?

16 MR. ROBINSON: I'm not sure if there was like a  
17 formal rollout [indiscernible] votes, something to be  
18 posted. I know that we expected at least, we expected  
19 applicants to come from many different [indiscernible]. And  
20 we also asked and requested our advisors to compile a list.  
21 So they, they were tasked with, you know, helping us solicit  
22 and gather applicants from many sources, from some they  
23 knew, and from outside sources.

24 MR. SHEIKH: So this was not officially rolled  
25 out as a requisition, uh, as such as a normal job would, you

1 know a requisition would be rolled out. This was more, I  
2 guess it was just mentioned over a town hall or through some  
3 other informal means?

4 MR. WEEDMAN: Objection, Your Honor.

5 THE COURT: Sustained. All right that's your  
6 questions.

7 MR. SHEIKH: Those are all the questions I had.  
8 Thank you, Your Honor. I appreciate it.

9 The COURT: Thank you very much. Anybody else  
10 wish to examine? All right, Mr. Weedman.

11 MR. WEEDMAN: Just one question Your Honor. Mr.  
12 Robinson, were all creditors other than Mr. DeFiore[ph] and  
13 Mr. Duffey considered for all spots in the NewCo board?

14 MR. ROBINSON: Yes.

15 MR. WEEDMAN: Okay, thank you Mr. Robinson. And  
16 Your Honor, I realize when I was up there before I  
17 authenticated and introduced the affidavit but I didn't move  
18 it into evidence and so I'd like to move --

19 THE COURT: All right any objections to Major  
20 Robinson's affidavit, it's declaration, it's UCC Exhibit  
21 230, ECF3584? If there is no objection, it's in evidence.

22 (UCC Exhibit 230, ECF3784, received into evidence)

23 MR. WEEDMAN: Thank you, Your Honor.

24 THE COURT: All right. All right that's the end  
25 of the evidence for today. Let's just talk briefly about



1 what witnesses will be called tomorrow, Mr. Colodny?

2 MR. COLODNY: Yes, Your Honor, I think we'll  
3 begin tomorrow with Mr. Galpo[ph] our expert witness. And  
4 then I believe that Mr. Kampanya[ph] will be the next  
5 witness which will conclude the case-in-chief.

6 THE COURT: Okay.

7 MR. PHILLIPS: Your, Your Honor?

8 THE COURT: No, just a second. Go ahead, Mr.  
9 Colodny.

10 MR. COLODNY: We have a, a few evidentiary issues  
11 about the video clips and other things that we intend to  
12 address with Your Honor tomorrow.

13 THE COURT: Okay. All right that's our day for  
14 tomorrow. Let me, is there anything that's intended to fill  
15 Thursday and Friday, and we'll have completed the witnesses  
16 as part of Debtor and Committees case-in-chief?

17 MR. KOENIG: Your Honor, Chris Koenig, Kirkland  
18 & Ellis for Celsius. We don't have any other witnesses. We  
19 do have an omnibus hearing on Thursday at 10:00 a.m.

20 THE COURT: Yeah.

21 MR. KOENIG: Nothing else for this trial.

22 THE COURT: Okay. All right. All right I see  
23 you all tomorrow. I would ask that, because I have another  
24 hearing at, you need to move your materials off of the  
25 counsel table. You can keep them, the court room is going to

1 be locked. So if you want to put them on the side you don't  
2 have, anything you want to leave, you can do that. Mr.  
3 Phillips, you wanted to be heard?

4 MR. PHILLIPS: Yes, Your Honor. I would just  
5 request that, that I be given remote access to the  
6 transcript from today's hearing --

7 THE COURT: There is no transcript to the,  
8 there is no transcript from today's hearing. A transcript  
9 can only be, there, there is a voice recording system. The  
10 transcript needs to be ordered. There is no transcript  
11 ready.

12 MR. PHILLIPS: Can I be given access to that voice  
13 recording?

14 THE COURT: You, no, not tonight. If you want  
15 to order the transcript, you can order the transcript. There  
16 will not be a transcript tomorrow. We are adjourned for the  
17 day.

18 (Whereupon the proceedings were concluded at 4:43 PM)

19  
20  
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22  
23  
24  
25

C E R T I F I C A T I O N

I, Dani Rossean, certified that the foregoing  
transcript is a true and accurate record of the proceedings.

A handwritten signature in black ink, appearing to be 'Dani Rossean', with a stylized initial 'D' and a horizontal line extending to the right.

Dani Rossean

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**Exhibit D**

**October 4, 2023 Transcript (Case in Chief in Support of Plan)**

*Includes the testimony of (i) Maxwell Galka (Elementus) and (ii) Robert Campagna (Alvarez & Marsal).*

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 22-10964-mg

4 - - - - - x

5 In the Matter of:

6

7 CELSIUS NETWORK LLC, et al.,

8

9 Debtors.

10 - - - - - x

11

12 United States Bankruptcy Court

13 One Bowling Green

14 New York, NY 10004

15

16 October 4, 2023

17 9:05 AM

18

19

20

21 B E F O R E :

22 HON MARTIN GLENN

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: KAREN

1 HEARING re HYBRID CONFIRMATION HEARING

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25 Transcribed by: Sonya Ledanski Hyde

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I N D E X

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2				
3	WITNESSES:	DIRECT:	CROSS:	REDIRECT: RECROSS:
4	MAXWELL GALKA	11		
5	ROBERT CAMPAGNA			
6				
7	EXHIBITS:			PAGE:
8	UCC Exhibit 231			10
9	UCC Exhibit 228			20
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11	UCC Exhibits 16 & 17			28
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22	Exhibit 7			121
23	Exhibit A			123

1 P R O C E E D I N G S

2 CLERK: All rise.

3 THE COURT: Please be seated. Morning. All  
4 right, Mr. Colodny.

5 MR. COLODNY: Hi, Your Honor. Aaron Colodny of  
6 White & Case on behalf of the Official Committee of  
7 Unsecured Creditors. Our first witness this morning is  
8 going to be Mr. Galka, but before I get to that, last night,  
9 we filed a revised exhibit list which is at Docket No. 3702.  
10 It includes a new exhibit marked as UCC 231 which is a  
11 transcript of this proceedings in the matter of the United  
12 States of America v. Roni Cohen-Pavon. And that's Case No.  
13 23-CR-000347.

14 And in that transcript, which I have copies for  
15 Your Honor here, and be made available on our FTP site, and  
16 I believe I sent a copy to your chambers last night, Mr.  
17 Cohen-Pavon, who is the former chief revenue officer of the  
18 Debtors enters a plea of guilty for certain charges against  
19 him and testifies under oath. And if it's ok with the  
20 Court, if I can approach and give Your Honor --

21 THE COURT: Sure.

22 MR. COLODNY: -- a copy of the --

23 THE COURT: Thank you.

24 MR. COLODNY: If it's okay with Your Honor, I'd  
25 like to read one paragraph of that into the record.

1 THE COURT: Sure.

2 MR. COLODNY: So that paragraph begins on Page 38  
3 at Line 17.

4 THE COURT: Just wait. Wait 'til I get there. Go  
5 ahead.

6 MR. COLODNY: This is Mr. Cohen-Pavon testifying  
7 and he says, "In October of 2021, I became responsible for  
8 overseeing and approving Celsius' market purchases of CEL  
9 token. Beginning in 2019, Celsius publicly told CEL market  
10 participants that the company was purchasing a certain  
11 amount of CEL in the market to fund the interest payment  
12 that it owed to Celsius' clients" --

13 THE COURT: It owed. I think you may have misread  
14 -- just read that sentence again.

15 MR. COLODNY: Says, "Beginning in 2019, Celsius  
16 publicly told CEL market participants that the company was  
17 purchasing a certain amount of CEL in the market to fund the  
18 interest payments that it owed to Celsius' clients. From  
19 October 21 through December 31, 2021, I oversaw and at times  
20 directly ordered a pattern of CEL token purchases in excess  
21 of what the company needed to buy to meet its interest  
22 obligations.

23 "I knew and understood that the purpose of these  
24 excess purchases was at least in part to increase the price  
25 of the CEL token, prevent the price of the CEL token from

1 dropping, and all to create the appearance of a more liquid  
2 market in CEL token trading, all of which were intended to,  
3 at least in part, to induce additional CEL purchases by the  
4 public at prices that likely did not reflect the true market  
5 price.

6 "I communicated with other Celsius employees by  
7 either email and telephone about these excess purchases,  
8 including the purpose behind the purchases at the time  
9 agreed to order excess purchases based on the -- based on  
10 agreement with orders from these other individuals.  
11 Throughout this time," and then the Court stops him and I  
12 will jump down to Paragraph 20. The defendant --

13 THE COURT: Line 20.

14 MR. COLODNY: Line 20. The defendant continues.

15 " I communicated with other Celsius employees by either  
16 email and telephone about these excess purchases including  
17 the purpose behind the purchases, and at times agreed to  
18 order excess purchases based on agreement or orders from  
19 these other individuals. Throughout this time period, I  
20 believe that the CEL token qualified as a security under the  
21 relevant laws and regulation."

22 Your Honor, we would ask that UCC Exhibit 231 be  
23 admitted into evidence.

24 THE COURT: Any objections? All right, UCC 231 --

25 MR. DAVIS: I object, Your Honor. There has been

1 no opportunity to cross examine Roni Cohen-Pavon.

2 MR. COLODNY: So Your Honor, last night we reached  
3 out to Mr. Cohen-Pavon's counsel who confirmed that he is  
4 unavailable and I believe that since this is a statement  
5 against interest, the plea would be admissible under rule --  
6 Federal Rule of Evidence 8033.

7 THE COURT: One second.

8 MR. COLODNY: 804(b)(3) is unavailability, Your  
9 Honor, as well.

10 THE COURT: Okay. Objection's overruled. Exhibit  
11 UCC 231 is admitted in evidence.

12 (UCC 231 Admitted Into Evidence)

13 MR. COLODNY: Thank you, Your Honor. I'll pass  
14 the podium to my partner Joshua Weedman.

15 THE COURT: Okay.

16 MR. WEEDMAN: Good morning, Your Honor.

17 THE COURT: Good morning.

18 MR. WEEDMAN: Joshua Weedman of White & Case on  
19 behalf of the Committee. Committee would like to call Max  
20 Galka as our next witness.

21 THE COURT: Okay. Come on up. Hi.

22 MR. GALKA: Hi.

23 CLERK: Raise your right hand, please. Do you  
24 solemnly swear or affirm that al the testimony you are about  
25 to give before this Court is truth (indiscernible)?

1 THE WITNESS: Yes, I do.

2 MR. WEEDMAN: And Your Honor, with permission, I  
3 have a binder for the Court --

4 THE COURT: Please.

5 MR. WEEDMAN: -- witness.

6 THE COURT: Thank you. Thank you.

7 DIRECT EXAMINATION OF MAX GALKA

8 BY MR. WEEDMAN:

9 Q Good morning, Mr. Galka.

10 A Good morning.

11 Q Mr. Galka, what is your current employment?

12 A I am the chief executive officer of Elementus.

13 Q And what is Elementus?

14 A Elements is a blockchain analytics and forensics  
15 company. We work with government agencies, financial  
16 institutions, and a variety of other kind of parties to help  
17 them understand what's actually happening on the blockchain.

18 Q Does Elementus have any other specialties?

19 A Well, we work with -- I work with government. What we  
20 focus on is helping them to trace the funds from illicit  
21 activity which could be ransomware, dark net markets, or  
22 other types of illegal activity on the blockchain and help  
23 them find where the money goes. When it comes to financial  
24 institutions, our focus is mainly on helping them to  
25 understand risk and identify market opportunities.



1 Q Mr. Galka, could you please provide the Court with your  
2 educational background?

3 A Sure. I graduated with a degree in finance from the  
4 Wharton School of Business, a degree in computer science and  
5 engineering from the University of Pennsylvania Engineering  
6 School. And I also taught data science as an adjunct  
7 lecturer at the University of Pennsylvania.

8 Q And Mr. Galka, do you have any experience with trading  
9 in financial instruments?

10 A Yes, I do.

11 Q Could you please explain what that is?

12 A Sure. For nine years, I worked as a trader on Wall  
13 Street at both Deutsche Bank and Credit Suisse, where I  
14 traded a variety of different fixed income instruments  
15 ranging from structured products, mortgage backed  
16 securities, to insurance linked derivatives.

17 Q Do you have as part of your experience in trading  
18 financial instruments any experience with trading in  
19 dislocated markets?

20 A Yes, I have a great deal of experience trading  
21 dislocated markets.

22 Q And could you please explain for the Court what a  
23 dislocated market is?

24 A Sure. Well, a dislocated market usually starts off  
25 with some sort of shock to the market which could be a shock

1 to the supply and demand. It could be a market rumor. It  
2 could be a policy change on behalf of government. But it's  
3 some sort of shock that sets the market price off in a  
4 trajectory that diverges from the underlying intrinsic  
5 value.

6 Q And Mr. Galka, could I please direct your attention to  
7 Tab 3 in the binder in front of you?

8 A Sure.

9 Q This is a document marked UCC Exhibit 228 with a docket  
10 number of 3580. Mr. Galka, do you recognize this as your  
11 first declaration in this matter?

12 A Yes, I do.

13 Q And if you turn to Page 4 of this first declaration, do  
14 you recognize that as your signature?

15 A Yes.

16 Q And Mr. Galka, do you see that your first declaration  
17 attaches your expert report, which is in your binder as  
18 Exhibit 2 that you prepared on September 22nd, 2023?

19 A Yes.

20 Q And your expert report from September 22nd contains two  
21 primary opinions; is that right?

22 A Yes, that's right.

23 Q Can you briefly summarize for the Court your first  
24 opinion set forth in your September 22nd expert report  
25 regarding the company's prepetition purchases of the CEL

1 token?

2 A Sure. The opinion is that the company went into the  
3 market and purchased more CEL token than what they had  
4 announced as their stated policy, which had the effect of  
5 artificially boosting the price for -- well, for the  
6 duration of Celsius' existence.

7 Q And sir, does your expert report also contain any  
8 opinion as to the market price of CEL token calculated in  
9 the petition date price notice?

10 A Yes, it does.

11 Q First of all, do you know what the market price for CEL  
12 token was as of the date of the petition?

13 A Yes, it was 81 cents.

14 Q And what is the opinion that you are offering as to the  
15 validity of that price?

16 A In my opinion, that price has effectively zero  
17 significance with respect to the actual intrinsic value of  
18 the token, that the market had become dislocated.

19 Q Could you please briefly explain why you believe it has  
20 zero value?

21 A Sure. Well, I would say that at the time of the pause,  
22 that was when the market for CEL token became dislocated.  
23 You had a number of different factors at play. Suddenly  
24 about 40 percent of the supply of CEL token, which was  
25 controlled by customers of Celsius, were suddenly locked up

1 on their platform. So those tokens were for all intents and  
2 purposes excluded from the market. So all that remained was  
3 about 5 percent of the existing supply of CEL. The pause  
4 itself started a number of rumors swirling about the future  
5 of Celsius and the potential for bankruptcy. And after that  
6 point, the market for CEL token became completely dislocated  
7 from its intrinsic value. And that's very clearly visible  
8 just by looking at the volatility of the price between the  
9 pause and the petition date.

10 THE COURT: The second time in expressing your  
11 opinion, you referred to intrinsic value. Can you --

12 THE WITNESS: Yes.

13 THE COURT: -- explain what that is?

14 THE WITNESS: Sure. I would say that in this  
15 discussion, if we're talking about the price of an asset, I  
16 will either be talking about one of two things, the market  
17 price, which is the price at which it's trading on different  
18 trading venues, and the intrinsic value, which represents  
19 the value of the asset separate and distinct from the market  
20 price. What is the actual value of this object?

21 THE COURT: Go ahead.

22 BY MR. WEEDMAN:

23 Q And Mr. Galka, just to follow up on the Court's  
24 question, do -- are the market price on the intrinsic value  
25 inherently linked in any way?

1 A Well, for the most part, the market price is the  
2 market's perception of what the intrinsic value is. There's  
3 no objective number to put on the intrinsic value in those  
4 cases. So it represents a reasonable, reliable estimate in  
5 most cases when the market is trading under normal  
6 conditions. When a market becomes dislocated, what the  
7 dislocated refers to is the dislocation of the market price  
8 from the intrinsic value. So in this case, the 81 cents was  
9 a dislocated market price which really was not connected in  
10 any way to the intrinsic value of the token.

11 Q In addition to the dislocating factors that you just  
12 discussed after the pause, were there any external shocks to  
13 the economic system that might have affected the price of  
14 CEL token around this time?

15 A Yes. Just as the backdrop, this was a crypto industry  
16 that was in the middle of a bit of a panic. The price of  
17 Bitcoin had fallen more than 50 percent in the prior few  
18 months. There were a number of other crypto firms that had  
19 already declared bankruptcy in the few months prior to that.  
20 So the entire industry was a bit skittish and was worried  
21 about what was going to be the next shoe to drop. So this  
22 was not coming out of nowhere.

23 Q And Mr. Galka, after the pause, was the full supply of  
24 CEL token available to be freely traded?

25 A No, it was not.

1 Q What percentage was locked up or what percentage was  
2 available?

3 A Well, if I were to break down the supply of CEL into  
4 three buckets, what was owned by the company and its  
5 treasury, what was owned by Celsius customers but sitting on  
6 the Celsius platform, and what was owned by Celsius  
7 customers but was outside of the Celsius platform, those  
8 numbers would be about 55 percent of the supply of tokens  
9 was in Celsius' treasury. About 40 percent was on Celsius  
10 owned by its customers, and about 5 percent was out there  
11 outside of the Celsius platform. So at the time of the  
12 pause, that 40 percent that was owned by customers but was  
13 sitting on Celsius became locked up.

14 Q And does it matter, Mr. Galka, that only 5 percent of  
15 the CEL token supply could be actively traded after the  
16 pause?

17 A Yes, it does.

18 Q Could you please explain why?

19 A Sure. Well, there are a number of different reasons  
20 why that would be conducive to a dislocated market. I would  
21 say the first one is that it's likely to think that some  
22 percentage, if not a very large percentage, of those Celsius  
23 customers that had their tokens sitting on the Celsius  
24 exchange would have withdrawn them and attempted to sell  
25 them during this period. But once they became locked up,

1 that completely removed the supply that -- the majority of  
2 the supply out of the equation, which allowed the market to  
3 be more free floating. You -- it also has the impact of,  
4 for anyone who has a short position that they're looking to  
5 cover, there's a limited amount of CEL out there for them to  
6 buy back. So it increased the potential for a short  
7 squeeze. And just generally speaking, when you disrupt the  
8 supply or the demand of a market to that degree, that's  
9 undoubtedly going to have consequences and act as a real  
10 shock to that market.

11 Q Mr. Galka, does the market data that you've reviewed  
12 support your conclusion that the CEL token market was  
13 dislocated?

14 A Yes, it does.

15 Q And so based on what you just testified, is it your  
16 opinion that the market price of CEL token is not a reliable  
17 indicator of the value of the CEL token after the pause?

18 A Yes, it is.

19 Q Finally, Mr. Galka, with respect to your expert report  
20 and your first declaration, you just referenced something  
21 called a short squeeze. Can you explain for the Court what  
22 a short squeeze is?

23 A Sure. A short squeeze is a market condition in which  
24 for some asset there is a large short open position, which  
25 means there are people who are short the asset and at some

1 point, will need to go into the market to buy it back and  
2 cover that short. And the squeeze part usually starts with  
3 some kind of upward shock to the price at which time anyone  
4 who has a short on will need to either post margin or will  
5 need to buy the security or asset back.

6 For those that do end up buying it back to cover their  
7 short, that will drive the price higher. And it creates  
8 this cycle of increasing price that self-perpetuates. And  
9 what you also have sometimes is third parties that come in  
10 from the outside to buy the price for the explicit purpose  
11 of driving it up to sell it to the short coverers once they  
12 buy their shorts back/

13 Q Mr. Galka, what is the relevance of a short squeeze  
14 here?

15 A Well, there were discussions taking place on social  
16 media after the time of the pause about a short squeeze. I  
17 believe there was a coordinated effort to effect a short  
18 squeeze on the market. From the data that we saw, there  
19 were short positions put on after the pause and some of  
20 those shorts look like they had to cover at prices far above  
21 where they shorted it, so it looks like there was to some  
22 degree short squeeze activity happening after the pause.

23 All that said, I would say that, you know, my  
24 perspective is that anything after the pause is essentially  
25 irrelevant for, with respect to looking at the intrinsic



1 value of the token. So the fact that there was a short  
2 squeeze, there were shorts, and that they were squeezed and  
3 that the price moved around is really evidence that bolsters  
4 and supports that conclusion.

5 Q Mr. Galka, do you understand that your expert report  
6 and your first declaration are being offered today as your  
7 direct testimony under oath?

8 A Yes, I do.

9 MR. WEEDMAN: Your Honor, at this time, we would  
10 offer evidence Exhibit UCC 228 and the initial first  
11 declaration of Mr. Galka along with certain reliance  
12 exhibits which are not yet into evidence which I can list  
13 for Your Honor.

14 THE COURT: Just a moment. Any objections to the  
15 Court admitting in evidence Exhibit 228, Mr. Galka's initial  
16 report? It's in evidence.

17 (UCC 228 Admitted Into Evidence)

18 MR. WEEDMAN: And Your Honor, we offer Exhibits 16  
19 to 26, 52 to 53 --

20 THE COURT: Oh, 16 to 26 --.

21 MR. WEEDMAN: 52 to 53, 57 to 58, 65 to 68, 70, 74  
22 to 75, 80, 82 to 84, and 87.

23 THE COURT: Just briefly, are these in the binder?

24 MR. WEEDMAN: They're not, Your Honor, but I have  
25 a copy.

1 THE COURT: -- see them.

2 MR. WEEDMAN: And Your Honor, we're offering these  
3 as reliance materials for Mr. Galka. And to be clear, Your  
4 Honor, they're also cited in his reports.

5 THE COURT: I understand, but I do want to see  
6 them.

7 MR. COLODNY: Your Honor, some of them are Excel  
8 sheets.

9 THE COURT: Mr. Galka, in preparing your report  
10 which has just been admitted into evidence, did you rely on  
11 the exhibits that have just been described, Exhibit 16 to  
12 26, 52 and 53, 57 and 58, 65 through 68, 70, 74 through 75,  
13 80, 82 through 84, and 87?

14 THE WITNESS: Are these the exhibits here in my  
15 binder? Are those the --

16 THE COURT: Did you put a copy in the binder  
17 before the witness?

18 MR. WEEDMAN: Your Honor, permission to approach?

19 THE COURT: Yeah, please. Yeah. So the first  
20 groups were 16 to 26. I want you to confirm whether these  
21 were materials you relied on preparing your report, which  
22 has been admitted exhibit -- as Exhibit UCC 228; 16 through  
23 26 is the first group.

24 THE WITNESS: Yes, Your Honor. I'm going through  
25 them.

1 THE COURT: Okay.

2 THE WITNESS: Your Honor, I have not finished  
3 going through these yet, but just --

4 THE COURT: Take your time.

5 THE WITNESS: -- having gone through the first  
6 few, I can say that, I'm familiar with all the material in  
7 here, but none of this did I rely on for my report from what  
8 I've seen so far.

9 THE COURT: I think he just undercut the basis for  
10 your admitting them in evidence. He's just testified he did  
11 not rely on them.

12 MR. WEEDMAN: Your Honor, if I may, these are  
13 exhibits that are cited as reliance materials in the report  
14 and for --

15 THE COURT: The witnesses just testified he didn't  
16 rely on them. Would you like to take him through it?

17 MR. WEEDMAN: Yeah, sure.

18 THE COURT: If they're not -- if he didn't rely on  
19 them, they don't come into evidence unless you establish a  
20 separate foundation for each and every one of them.

21 MR. WEEDMAN: Your Honor, if -- actually come back  
22 to this on redirect to the extent --

23 THE COURT: No. If you don't want to admit the  
24 evidence, then you go on to your next subject. If you're  
25 going -- if you're going to seek to admit them, you're going

1 to do it now.

2 THE WITNESS: Your Honor, may I speak freely?

3 THE COURT: No. Wait one --

4 THE WITNESS: Sure.

5 BY MR. WEEDMAN:

6 Q Mr. Galka, can I turn your direction to your report,  
7 which is in Tab 3 in the binder in front of you, the spiral  
8 binder in front of you?

9 A Yes.

10 Q And if you turn to Page 47 of the expert report, you  
11 see that there's a list of materials relied upon?

12 A Yes, I do.

13 Q And Mr. Galka, does this refresh your recollection that  
14 there were materials that you relied upon in preparing your  
15 expert report?

16 A Yes, it does. Allow me to finish going through these,  
17 please.

18 MR. KIRSANOV: Your Honor, I object. The witness  
19 already indicated that he did not rely on the exhibits.

20 THE COURT: The examination is still going on.  
21 You'll have a chance on cross examination, if you wish to  
22 examine. Your objection is overruled.

23 Mr. Weedman, I would note that Exhibit B to his  
24 report, list of materials relied upon, has Bates numbers, no  
25 exhibit numbers. There are no Bates numbers on the -- at

1 least, I've started to go through the exhibits in the binder  
2 and I don't see Bates numbers on them.

3 MR. WEEDMAN: One moment, Your Honor. Your Honor,  
4 I believe all the ones that were -- that have Bates numbers  
5 on them have already been admitted to evidence and this  
6 exercise that we're trying to admit the ones that are not  
7 Bates numbered but were still relied upon or cited to.

8 THE COURT: I'm at a complete loss.

9 MR. McCARRICK: Your Honor, I think just to --  
10 T.J. McCarrick, Kirkland & Ellis, on behalf of the Debtors.  
11 Just to clear up the record a little bit with respect to the  
12 Bates stamp reliance materials that are on the UCC's exhibit  
13 list, those were moved into evidence following Mr. Ferraro's  
14 direct examination.

15 I believe what the Committee is now attempting to  
16 do is to admit additional non-Bates stamp reliance materials  
17 that appear on page -- I guess pages, between 37 and 60 of  
18 Mr. Galka's report. And what might be helpful is just to  
19 use those pages and tick through the exhibits in the binder  
20 to confirm whether or not Mr. Galka relied upon them. But  
21 that's for the Committee.

22 BY MR. WEEDMAN:

23 Q Mr. Galka, can I direct your attention to Tab 18 in the  
24 big binder in front of you?

25 A Sure. And you see that this is a article about -- from

1 Reuters titled "Bitcoin stabilizes after heavy losses, but  
2 pessimism reigns in crypto markets."

3 A Yes.

4 Q And Mr. Galka, do you recall reviewing this in  
5 preparation of your expert report?

6 A Yes, I do.

7 Q And was this something that you relied upon in  
8 preparation of your expert report?

9 A Yes, it was.

10 THE COURT: That's Exhibit 18 -- Tab 18, UCC 18?

11 MR. WEEDMAN: Correct, Your Honor.

12 THE COURT: Any objections to UCC 18? It's in  
13 evidence.

14 (UCC 18 Admitted Into Evidence)

15 BY MR. WEEDMAN:

16 Q Mr. Galka, can I --

17 THE COURT: Let's -- we are going to take a brief  
18 recess. You better get your act together.

19 MR. WEEDMAN: Thank you, Your Honor.

20 THE COURT: Okay? This -- you know, this ought to  
21 be -- it ought to go smoothly. Am I correct that everything  
22 listed as a reliance material in Exhibit B to his report is  
23 not among -- and you're saying they're already in evidence  
24 and they're not among the exhibits that you're now seeking  
25 to admit? Do you understand my question?

1 MR. WEEDMAN: I did not understand your question,  
2 sir.

3 THE COURT: I'm looking at Pages 47 through the  
4 top of 56 of the report.

5 MR. WEEDMAN: Yes.

6 THE COURT: And it lists Bates numbers. You're  
7 representing those have already been in evidence?

8 MR. WEEDMAN: I believe that those with Bates  
9 numbers have -- were admitted into evidence after Mr.  
10 Ferraro's --

11 THE COURT: And that doesn't include anything that  
12 you now are trying to admit?

13 MR. WEEDMAN: That's correct, Your Honor.

14 THE COURT: Are any of the exhibits which you're  
15 seeking to admit, 16 to 26, 52 and 53, 57 and 58, 65, 68,  
16 70, 74 and 75, 80, 82 to 84, and 87; are they listed in his  
17 report?

18 MR. WEEDMAN: They are, Your Honor.

19 THE COURT: They are.

20 MR. WEEDMAN: Throughout the report, the footnotes  
21 and -- sorry. The issue, Your Honor, we're having right now  
22 is they're not cross referenced with the exhibit number that  
23 we are -- that is on the UCC exhibit list. And so that's  
24 just the challenge when we're trying to walk through and tie  
25 them. But I appreciate Your Honor's suggestion for a short

1 recess. I think we can organize this very, very quickly.

2 THE COURT: I'll be back on the bench at five to  
3 ten.

4 MR. WEEDMAN: Thank you, Your Honor.

5 (Recess)

6 CLERK: All rise.

7 AUTOMATED VOICE: Recording in progress.

8 THE COURT: All right, everybody please be seated.

9 Mr. Galka, you're still under oath. Mr. Weedman.

10 MR. WEEDMAN: Thank you, Your Honor.

11 BY MR. WEEDMAN:

12 Q Mr. Galka, when we broke, we were talking about certain  
13 exhibits and whether or not you relied on them. Can I ask  
14 you, sir, do you still have your report in front of you?

15 A Yes, I do.

16 Q Can I ask you to turn to Page 27 of your report,  
17 please?

18 A Sure.

19 Q And sir, do you see here that you're discussing certain  
20 Slack messages?

21 A Yes, I do.

22 Q Okay. And you see there is a Footnote 50 relating to  
23 Etherscan transaction data?

24 A Mm hmm.

25 Q And can I ask you, sir, to please turn to, in your big



1 binder, Tab 16 and 17? You see --

2 A -- got it.

3 Q This reference is Excel data that's on the USB.

4 A Sixteen through eighteen in the binder?

5 Q Sixteen and seventeen. The reference to Etherscan  
6 data.

7 A Yes.

8 Q And is this the Etherscan data that you relied on in  
9 Footnote 50 of your report?

10 A Yes, it is.

11 MR. WEEDMAN: Your Honor, I would offer Exhibits  
12 16 and 17 into evidence.

13 THE COURT: Any objections? Sixteen and seventeen  
14 are admitted.

15 (Exhibits 16 and 17 Admitted Into Evidence)

16 BY MR. WEEDMAN:

17 Q Mr. Galka, on the same page, Footnote 51, do you see a  
18 reference to -- the same page of your report, sorry, on Page  
19 27.

20 A Yes.

21 Q Do you see a reference to Mashinsky trades corrected  
22 XLSX?

23 A Yes, I do.

24 Q And do you see his XLSX, a reference to Excel data?

25 A Yes, that's an Excel spreadsheet.

1 Q And can I turn your attention to UCC Exhibit 70 in your  
2 big binder?

3 THE COURT: I'm sorry, which one?

4 MR. WEEDMAN: Seventy, sir.

5 MR. COLODNY: These ones aren't going to be in the  
6 binder, Your Honor, because they're exhibits that are in the  
7 --

8 MR. WEEDMAN: These are in the -- on the data  
9 files, the FTP file.

10 THE COURT: Okay.

11 BY MR. WEEDMAN:

12 Q And Mr. Galka, do you understand that the Excel data  
13 for the Mashinsky trades which is on UCC Exhibit 70 is the  
14 data that you relied upon in Footnote 51?

15 A Yes.

16 MR. WEEDMAN: Your Honor, I'd offer exhibit -- UCC  
17 Exhibit 70 into evidence.

18 THE COURT: It's in evidence.

19 (UCC Exhibit 70 Admitted Into Evidence)

20 BY MR. WEEDMAN:

21 Q Mr. Galka, can I ask you to turn to Page 17 of your  
22 report, please?

23 A Yes.

24 Q And sir, do you see in Footnote 32, there's a reference  
25 to Celsius CEL OTC transactions and then an Excel suffix

1       there?

2       A       Yes, I do.

3       Q       And is that -- that's also a reference to an Excel data  
4       sheet?

5       A       Yes, it is.

6       Q       And sir in Tab 74, UCC Exhibit 74, which is also data  
7       which is on the FTP site, can you confirm that you relied  
8       upon the data in that Excel chart in your reference to  
9       Footnote 32?

10      A       Yes, I can.   Yes.

11               THE COURT:   So that's 74?

12               MR. WEEDMAN:   That's correct, Your Honor, and we  
13       would offer that into evidence.

14               THE COURT:   All right, it's in evidence.

15               (UCC Exhibit 74 Admitted Into Evidence)

16      BY MR. WEEDMAN:

17      Q       And Mr. Galka, can you please turn to Page 13?

18      A       Yeah.   I got it.

19      Q       And do you see on Page 13, there is a Footnote 28  
20       referencing Excel data for CEL token burn data?

21      A       Yes.

22      Q       And in UCC Exhibit 75, again on the FTP data site,  
23       there is an Excel chart.   Can you please confirm that you  
24       relied upon this CEL token burn data in UCC Exhibit 75 as  
25       referenced in Footnote 28 of your report?

1 A Yes, confirmed.

2 MR. WEEDMAN: Your Honor, we would offer UCC  
3 Exhibit 75.

4 THE COURT: All right, it's in evidence.  
5 (UCC Exhibit 75 Admitted Into Evidence)

6 BY MR. WEEDMAN:

7 Q Mr. Galka, will you please turn to Page 14 of your  
8 report?

9 A Okay.

10 Q Footnote 30, there's a reference to an Excel chart, the  
11 FREEZE report. Do you see that?

12 A Yes, I do.

13 Q And that is on data which is UCC Exhibit No. 80. Can  
14 you confirm that the Excel chart in UCC Exhibit 80 is  
15 something that you relied upon as reference to Footnote 30  
16 of your report?

17 A Yes, confirmed.

18 MR. WEEDMAN: Your Honor, we would offer footnote  
19 -- or, I'm sorry, we would offer UCC Exhibit 80 into  
20 evidence.

21 THE COURT: All right, it's admitted into  
22 evidence.

23 (UCC Exhibit 80 Admitted Into Evidence)

24 BY MR. WEEDMAN:

25 Q Mr. Galka, can you please turn to Page 10 of your

1 report?

2 A Yes.

3 Q And do you see, sir, in Footnote 20 there's a reference  
4 to Celsius magic-wallets.csv? do you see that?

5 A Yes, I do.

6 Q And the data for that Celsius Magic Wallets is  
7 reflected in UCC Exhibit 82. Can you please confirm that  
8 this is something that you relied upon in the preparation of  
9 your expert report as reflected here?

10 A Confirmed.

11 MR. WEEDMAN: Your Honor, we offer UCC Exhibit 82.

12 THE COURT: All right, 82 is in evidence.

13 (UCC Exhibit 82 Admitted Into Evidence)

14 BY MR. WEEDMAN:

15 Q Just a few more. Can you please, Mr. Galka, turn to  
16 Page 20 of your report?

17 A Okay.

18 Q And you see in Footnote 39 there is a reference to two  
19 Excel charts for Celsius On-Chain Buybacks and Celsius  
20 Weekly CEL Buybacks and Rewards. Do you see that?

21 A Yes, I do.

22 Q And that data is included in UCC Exhibit 33 at FTP.  
23 Can you please confirm that this is data upon which you  
24 relied in preparing your report?

25 A Yeah, confirmed.

1 MR. WEEDMAN: Your Honor, we offer UCC Exhibit 83  
2 into evidence.

3 THE COURT: All right, 33 is in evidence.

4 MR. WEEDMAN: And -- Your Honor, that was UCC 83.  
5 I'm not sure if I misspoke.

6 THE COURT: Oh, 83. I'm sorry. I misspoke.  
7 Okay, 83 is in evidence.

8 (UCC Exhibit 83 Admitted Into Evidence)

9 BY MR. WEEDMAN:

10 Q And Mr. Galka, on the same page, the prior footnote  
11 there is a reference to an Excel chart, Celsius Weekly CEL  
12 Buybacks and Rewards. Do you see that?

13 A Yes, I do.

14 Q And that data is included in UCC Exhibit 84. Can you  
15 please confirm that this is data upon which you relied in  
16 preparing your report?

17 A Yeah, confirmed.

18 MR. WEEDMAN: Your Honor, we offer UCC Exhibit 84  
19 into evidence.

20 THE COURT: All right, it's in evidence.

21 (UCC Exhibit 84 Admitted Into Evidence)

22 BY MR. WEEDMAN:

23 Q Finally, Mr. Galka, can I have you turn to Page 23 of  
24 your report?

25 A Yes.

1 Q And you see in Footnote 43 there's a reference to OTC  
2 transactions data UnMasked, UCC request, September 2023.

3 You see that?

4 A Yes, I do.

5 Q And that's also a reference to Excel data?

6 A Yes.

7 Q And can you please -- and that data is included on the  
8 FTP for UCC Exhibit 87. Can you please confirm that this  
9 data is something upon which you relied on preparing your  
10 expert report?

11 A Confirmed.

12 MR. WEEDMAN: Your Honor, we offer UCC Exhibit 87  
13 into evidence.

14 THE COURT: All right, it's in evidence.

15 (UCC Exhibit 87 Admitted Into Evidence)

16 BY MR. WEEDMAN:

17 Q Thank you, Mr. Galka.

18 MR. WEEDMAN: Thank you, Your Honor, for your  
19 indulgence.

20 THE COURT: So you're not moving the rest in or --

21 MR. WEEDMAN: That's all for now.

22 THE COURT: All right. Just, let me just go over  
23 to make sure that my records are the same as yours. My  
24 records show that Exhibits 16, 17, and 18 have been admitted  
25 in evidence. And then exhibits -- UCC Exhibits 70, 74, 75,

1 80, 82, 83, 84, and 87 are in evidence.

2 MR. WEEDMAN: That's correct, Your Honor. May I?

3 THE COURT: All right. Go ahead.

4 BY MR. WEEDMAN:

5 Q Now, Mr. Galka, I'd like to direct your attention to  
6 Tab 4 in the small binder in front of you and this is UCC  
7 Exhibit 229 with the docket number of 3659.

8 A Okay.

9 Q And Mr. Galka, is this second declaration that you  
10 offered in this matter? And it starts at the fourth page of  
11 this. Page 4 of 10 --

12 A Yeah.

13 Q -- on the banner at the top.

14 A Yeah. Yes, it is.

15 Q Okay. And Mr. Galka, if you turn to the last page of  
16 this declaration, is that your signature?

17 A Yes, it is.

18 Q And Mr. Galka, why did you offer an additional second  
19 declaration?

20 A Well, after the first declaration, I had opined that  
21 the price of 81 cents, the market price at the time of 81  
22 cents, was not an accurate reflection of the intrinsic  
23 value. My opinion is that there is no reliable way of  
24 putting a market price on it. So I did not, but it was my  
25 understanding that Your Honor wished to see a market price



1 which --

2 THE COURT: Well, I want to know the --

3 THE WITNESS: -- the value --

4 THE COURT: -- whether you had -- what I wanted --  
5 no, I know there's no market --

6 THE WITNESS: Yeah, sorry.

7 THE COURT: But my question that I had asked was  
8 whether you have an opinion about what the value of the CEL  
9 token was at the petition date.

10 THE WITNESS: Yes. I misspoke saying market price  
11 and what I meant to say was the value. Pardon me. So I --  
12 that was the substance of this second addition to my  
13 opinion. I still was not able to put a market price on it,  
14 but I did give some additional context as to how I see the  
15 intrinsic value.

16 BY MR. WEEDMAN:

17 Q And --

18 A Assuming --

19 Q Can you explain for the Court why you were not able to  
20 put a market price on the value of CEL token on the petition  
21 date?

22 A And apologies, when I misspoke when I said market  
23 price. I really meant intrinsic value. Yes, I can. Well,  
24 there are really only two ways of getting to a -- to the  
25 value of an asset. One would be looking at the market price

1 when the market is functioning under normal conditions.  
2 Short of that, would be using some sort of model to  
3 calculate a market price. Now, when valuing most  
4 traditional financial assets, what you're really -- what  
5 you're really valuing is a series of future cashflows which  
6 you're discounting back to the present, and that represents  
7 the intrinsic value.

8 In this case, with the CEL token, there are no  
9 cashflows. So it doesn't really fit into any kind of  
10 traditional asset valuation model. The market or the  
11 intrinsic value, I would not say is zero. Certainly, I  
12 think there are arguments for why it could have some  
13 intrinsic value. There is an argument that it could have  
14 like a -- something of a meme coin intrinsic value to it  
15 where people are trading it as some kind of like a  
16 collectible.

17 There's, I imagine, some potential for it to  
18 hypothetically have some value, if there is a hypothetical  
19 entity that emerges from the restructuring that uses this  
20 token and -- within its platform as a utility token. I  
21 could see an argument, if someone feels strongly that that's  
22 going to be the case. I could see an argument for that  
23 having value. In my opinion -- well, both of those factors  
24 are well, really impossible to quantify and in my opinion,  
25 de minimis.

1           So if I were asked to place a value on to this asset  
2           and I were trading this token at the time of the petition  
3           date, I would decline to put a price on it.

4           THE COURT: If you knew with the petition date  
5           that the Debtor is going to be liquidated, will never --  
6           will not exist.

7           THE WITNESS: Yes.

8           THE COURT: What -- do you have a view of  
9           hypothetically what the value of that would be, if you knew  
10          at the petition date, no chance?

11          THE WITNESS: Yeah, I think, the reality is, I  
12          think in almost all circumstances, I would see the value as  
13          being zero, Your Honor.

14          THE COURT: So, you know, there are Chapter 11  
15          debtors whose stock continues to trade over the over the  
16          counter market, for example, at a petition date but it's a  
17          guess or expectation that this debtor may reorganize and  
18          equity will have some value, unknown at that time. Okay.  
19          Do you agree with that or -- I mean, it's a speculation, an  
20          estimate whether you think this debtor can reorganize and  
21          that there will be some equity now.

22          THE WITNESS: Yes. Yes.

23          THE COURT: What about the situation with  
24          something like the CEL token?

25          THE WITNESS: Well, you know, utility tokens can

1 take any shape or form and there are -- it's really just up  
2 to your imagination what they can be used for. In this case  
3 with the Celsius platform gone, I mean, the -- a utility  
4 token like this really has no real function outside of  
5 Celsius. You know, as to whether or not this token could  
6 have a function in, like, a restructured entity that emerges  
7 from the restructuring, I mean, I can imagine hypothetically  
8 scenarios where it does, but I'm at that point, sort of  
9 grasping at straws.

10 THE COURT: Okay.

11 THE WITNESS: Yeah.

12 BY MR. WEEDMAN:

13 Q And Mr. Galka, in coming to your conclusion that the  
14 value of the CEL token would be de minimis at the petition  
15 date, did you look at any historical pricing data?

16 A Yes, I did.

17 Q And do you have a view as to whether or not any  
18 historical pricing data has any indicative value in coming  
19 to a valuation of the CEL token at the time of the petition?

20 A Well, I think there's a little bit you can infer from  
21 the market pricing history. At the time of the pause, the  
22 price was around 35 1/2. I think that's the last time the  
23 market price really has any -- carries any information  
24 regarding the intrinsic value, because after that, the  
25 market became dislocated. That being said, I think that is

1 an upper bound even at the time of the pause and certainly  
2 at the time of the petition, a significant upper bound. IN  
3 that month period between the pause and the petition, there  
4 was a lot of news that came out. None of it, as I recall,  
5 was positive. So, in my opinion, yeah, the 35 1/2  
6 represents some sort of upper bound on what the price was at  
7 the time of petition, but I think that that's an extremely  
8 high upper bound and that more likely the prices -- the  
9 value, excuse me, was something closer to zero.

10 Q And Mr. Galka, the price at the time of the pause, do  
11 you think that that's indicative of the price at the time of  
12 the petition?

13 A No.

14 Q And why is that?

15 A Well, because in that month that it passed, all the  
16 information, all the news that came out about Celsius was --  
17 I don't mean to make a absolute statement, but predominantly  
18 negative. So, if 35 1/2 represented an upper bound on the  
19 intrinsic value at the time of the pause, then that is  
20 certainly an upper bound at the time of the petition. I  
21 would expect the value to be substantially lower.

22 Q And Mr. Galka, do you understand that the testimony set  
23 forth in your declaration which is Exhibit UCC 229, Docket  
24 3659 is being offered as your direct testimony under oath in  
25 Court today?

1 A Yes, I do.

2 MR. WEEDMAN: Your Honor, we would offer into  
3 evidence UCC Exhibit 229, Docket No. 3659 into evidence.

4 THE COURT: Any objections? All right, it's  
5 admitted into evidence.

6 (UCC Exhibit 229 Admitted Into Evidence)

7 BY MR. WEEDMAN:

8 Q Mr. Galka, one final question. We just heard some  
9 reference to utility tokens. Can you describe what you  
10 understand the utility token to be?

11 A Yes. A utility token is a token that has some kind of  
12 function within the platform for which it was designed. So  
13 for example, on Celsius, I believe that the CEL token could  
14 be used to make interest payments on loans that you had  
15 taken out and you get some kind of discounted interest rate  
16 if you pay with CEL.

17 Conversely, if you have your assets sitting there and  
18 earning interest, you can elect to earn the interest in CEL  
19 and get a boosted rate. And I believe depending on the  
20 amount of CEL that you held on the platform, it unlocked  
21 various features within the website. So a utility token has  
22 a function within the ecosystem for which it was designed,  
23 but outside of that, it's just a ledger of transactions.

24 Q And in your opinion, is there any way to put any  
25 quantification to the value of a utility token?

1 A Hard to say, in the general sense, because utility  
2 tokens can be anything we want them to be. But generally  
3 speaking, no. I am not familiar with any methodology for  
4 valuing utility token.

5 MR. WEEDMAN: Thank you, Mr. Galka I pass the  
6 witness, Your Honor.

7 THE COURT: All right, thank you. Anybody in the  
8 courtroom wish to cross examine?

9 MR. KIRSANOV: Dimitry Kirsanov, pro se --

10 THE COURT: Just a second. Is there anyone in the  
11 courtroom who wishes to cross examine? All right. Mr.  
12 Kirsanov, on Zoom.

13 MR. KIRSANOV: Thank you, Your Honor.

14 CROSS EXAMINATION OF MAX GALKA

15 BY MR. KIRSANOV:

16 Q Good morning, Mr. Galka.

17 A Good morning, Mr. Kirsanov.

18 Q You've never been employed by a competitor of Celsius,  
19 have you?

20 A No.

21 Q You haven't invested in any competitor of Celsius, have  
22 you?

23 A No, I have not.

24 Q You've never been involved with FTX or Alameda  
25 Research, is that correct?

1 A Well, Alameda Research participated in a fundraising  
2 round of ours in our Series A fundraising, so if -- to the  
3 extent being involved with includes that, then yes.

4 Q What is your opinion of the price of CEL token on  
5 bankruptcy day?

6 MR. WEEDMAN: Objection.

7 THE COURT: Sustained.

8 BY MR. KIRSANOV:

9 Q So the deciding -- I'm sorry. So the decision  
10 regarding the price of CEL token on bankruptcy day is your  
11 own assessment?

12 MR. WEEDMAN: Objection.

13 THE COURT: Let me ask you. You're asking for his  
14 opinion on the value of the CEL token as of the petition  
15 date; is that correct, Mr. Kirsanov?

16 MR. KIRSANOV: That's correct.

17 THE COURT: All right. Are you able to answer  
18 that?

19 THE WITNESS: Sorry. Could you repeat the  
20 question, please, Mr. Kirsanov?

21 BY MR. KIRSANOV:

22 Q So the decision regarding the price of CEL token on  
23 bankruptcy day is your own assessment?

24 THE COURT: Let me ask this. Do you have an  
25 opinion about the value of the CEL token at the petition



1 date?

2 THE WITNESS: Yes. I would say that it is de  
3 minimis, very close to zero, but I do not have a number that  
4 I can put on it.

5 BY MR. KIRSANOV:

6 Q Do you not have an exact, precise opinion for the  
7 bankruptcy day evaluation? Correct?

8 A Well, I have a precise opinion. I do not have a  
9 precise number, if that's your question.

10 Q Mr. Galka, you did not extensively study the Celsius  
11 wallet structure, did you?

12 A Yes, I did, as a matter of fact.

13 Q You did? Okay. You were not provided with information  
14 about Celsius that regular creditors couldn't access, were  
15 you?

16 MR. McCARRICK: Object to form.

17 THE COURT: Sustained.

18 BY MR. KIRSANOV:

19 Q You have no knowledge of any technical issues related  
20 to Celsius wallets, do you?

21 A Could you be more specific, please?

22 Q Were there any technical issues that you were aware of  
23 with Celsius wallets?

24 A Could you please be more specific what you mean by  
25 technical issues?

1 Q Any technical issues with Celsius wallets.

2 MR. McCARRICK: Objection.

3 THE COURT: Sustained. You're going to have to  
4 make your questions more specific and clear.

5 MR. KIRSANOV: Yes, Your Honor.

6 BY MR. KIRSANOV:

7 Q Were you aware of any technical issues related to  
8 Celsius custody wallets?

9 THE COURT: What do you mean by technical issues,  
10 Mr. Kirsanov?

11 MR. KIRSANOV: I'd like to actually put in Exhibit  
12 4 and if I may request permission for the witness to have a  
13 copy.

14 MR. WEEDMAN: Your Honor, we would object. We  
15 haven't received any exhibits.

16 THE COURT: Mr. Kirsanov, did you post exhibits  
17 last night?

18 MR. KIRSANOV: Yes, I did.

19 THE COURT: Okay. Does somebody have them?

20 MR. McCARRICK: Yeah, I think -- the Debtors have  
21 a copy, Your Honor. Give us a second.

22 THE COURT: Okay. I got Mr. Davis' list of  
23 exhibits, but I did not see Mr. Kirsanov's. But Mr.  
24 Kirsanov, if you'll hold on, one of the Debtors' counsel is  
25 going to hand the exhibit to the witness.

1 MR. KIRSANOV: I appreciate that. Thank you.

2 THE COURT: All right. Go ahead, Mr. Kirsanov. I  
3 think the witness has it. I have a copy of it and so do  
4 other counsel.

5 BY MR. KIRSANOV:

6 Q Mr. Galka, does this appear to be the Celsius app?

7 A Bear with me just one moment, please, Mr. Kirsanov.

8 THE COURT: Which are -- you're referring to  
9 Exhibit 4 in your little packet?

10 MR. KIRSANOV: Correct. Yes, sir.

11 THE COURT: Yeah, that's labeled, "Example of  
12 inability to transfer funds ahead of freeze April 19, 2022."  
13 That's the date on it. It's Page 3 of 6 of ECF 3694.

14 BY MR. KIRSANOV:

15 A Okay, I have it in front of me, Mr. Kirsanov. Would  
16 you mind repeating your question?

17 Q Absolutely. Does this appear to be the Celsius app?

18 A Yes, it does.

19 Q Does this appear to be a Celsius transfer?

20 MR. WEEDMAN: Objection, Your Honor. I think this  
21 is outside of the scope of anything that this witness --

22 THE COURT: Overruled.

23 BY MR. KIRSANOV:

24 A Well, it appears to be a pending transfer. It says you  
25 will transfer. So, yes, it seems like a transfer that has

1 not yet been effected.

2 Q Does this appear that the wallet has funding?

3 A Yeah, from what I can make out, yes, it does look like  
4 the wallet does have these --

5 Q -- why would the wallet show that I am unable to  
6 transfer zero funds?

7 MR. McCARRICK: Objection. Lacks personal  
8 knowledge.

9 THE COURT: Sustained.

10 BY MR. KIRSANOV:

11 Q Can you find the orange message at the top?

12 MR. WEEDMAN: Objection, Your Honor.  
13 (indiscernible).

14 THE COURT: I don't know what the -- what is your  
15 question, Mr. Kirsanov?

16 MR. KIRSANOV: I'm trying to ask if he can define  
17 that orange message in the top of the --

18 THE COURT: -- you can't transfer zero funds? Is  
19 that what you're --

20 MR. KIRSANOV: Correct.

21 THE COURT: Do you have any idea what that is

22 THE WITNESS: No, I do not.

23 BY MR. KIRSANOV:

24 Q I also like you to refer to Exhibit 6 at this point.

25 THE COURT: Exhibit 6 is Page 5 of 6 of ECF 3694.

1 Go ahead, Mr. Kirsanov.

2 BY MR. KIRSANOV:

3 Q Okay. Does this also appear to be the Celsius app?

4 A Yes, it does.

5 Q Does this appear to be a Celsius transfer?

6 A Yes, it looks like a transfer that has -- is pending  
7 confirmation.

8 Q Does this appear -- does -- excuse me. Does this  
9 appear that the wallet has funding?

10 A Yes, it does.

11 Q What is the message in orange, error -- the error  
12 message contradictory?

13 MR. McCARRICK: Objection.

14 THE COURT: Sustained.

15 BY MR. KIRSANOV:

16 Q There's a clear explanation for why the wallet is  
17 showing insufficient funds, isn't there?

18 MR. McCARRICK: Objection.

19 THE COURT: Sustained.

20 BY MR. KIRSANOV:

21 Q Do you have any idea why it indicates the funds are not  
22 available, Mr. Galka?

23 MR. WEEDMAN: Objection, Your Honor.

24 THE COURT: Overruled.

25 BY MR. KIRSANOV:

1 A Well, I can read the message. I see that the amount,  
2 it says not enough funds, 100,000 CEL requested and only  
3 271,585 cell is available, which of course doesn't make a  
4 whole lot of sense. All that being said, I don't know why  
5 this message came up, if that's your question./

6 MR. KIRSANOV: Your Honor, could I enter these  
7 exhibits into evidence?

8 MR. McCARRICK: Objection.

9 THE COURT: Sustained. There's no foundation for  
10 these documents having been laid.

11 BY MR. KIRSANOV:

12 Q When was the Custody wallet created?

13 MR. WEEDMAN: Objection, Your Honor.

14 THE COURT: Overruled. You can answer if you  
15 know.

16 BY MR. KIRSANOV:

17 A I don't know.

18 Q Based on your written testimony, you indicated it was  
19 created in April of 2022; is this information accurate?

20 A Yeah, if it's in my written testimony, then yes, that  
21 is accurate.

22 THE COURT: May I ask you, Mr. Kirsanov, what  
23 paragraph of his written testimony are you referring to?

24 MR. KIRSANOV: I do not have that exactly offhand,  
25 but it was in his written testimony.

1 THE COURT: Was it in the original testimony or  
2 this, the more recent supplemental declaration?

3 MR. KIRSANOV: I believe -- I'm not sure about  
4 that, Your Honor.

5 MR. COLODNY: Your Honor, it's on Paragraph 61  
6 (inaudible).

7 THE COURT: Of the original?

8 MR. COLODNY: The original.

9 THE COURT: Just give me a minute.

10 MR. COLODNY: (indiscernible).

11 THE COURT: Yes. Do you have your original report  
12 in front of you, Paragraph 61?

13 THE WITNESS: Yes, I do. It's on Page 12. Go  
14 ahead with your questions, Mr. Kirsanov.

15 BY MR. KIRSANOV:

16 Q Are you familiar with the Blonstein declaration, Mr.  
17 Galka?

18 A No, I am not.

19 MR. KIRSANOV: Can Mr. Galka please be provided my  
20 Exhibit 2?

21 THE COURT: Mr. Kirsanov --

22 CLERK: Yeah, we could ask --

23 THE COURT: If you'll wait, we'll see if we can  
24 find it. You reference it on the first page of your filing,  
25 Page 1 of 6. Exhibit 2 is ECF 1531, but we don't have all

1 of these in the courtroom. Someone is trying to see whether  
2 they can locate it.

3 MR. McCARRICK: Can we make Mr. Young a cohost?

4 THE COURT: Yes, you can.

5 CLERK: Just pull it up --

6 MR. McCARRICK: And Mr. Young, if you could --

7 CLERK: (indiscernible).

8 MR. McCARRICK: Thank you.

9 THE COURT: Deanna, you can make Mr. Young a  
10 cohost. We'll put it up on the screen.

11 CLERK: Okay.

12 THE COURT: Thank you very much.

13 CLERK: Just one moment.

14 MR. KIRSANOV: Thank you.

15 CLERK: Okay, he is a cohost.

16 MR. McCARRICK: Okay. Mr. Young, could you  
17 display Docket No. 1531?

18 MR. YOUNG: 1531?

19 MR. McCARRICK: Yes, sir.

20 MR. YOUNG: -- second.

21 THE COURT: Sure. Fine.

22 MR. McCARRICK: Apologies for the delay. It  
23 should be shared on screen now.

24 MR. KIRSANOV: Thank you.

25 THE COURT: All right, so on the screen in the



1 courtroom, I don't know whether you can see it or not, is  
2 exhibit -- the Blonstein declaration, ECF 1531.

3 MR. KIRSANOV: If you could scroll down to Page 8,  
4 please.

5 BY MR. KIRSANOV:

6 Q Mr. Galka, is this document dated June 6th of 2022?

7 A Yeah, that that's the date that I see at the top of the  
8 chart right there.

9 Q Was this before Celsius froze?

10 A Yes, it is.

11 Q In this document, are there adequate amounts of CEL  
12 token under assets to meet the liabilities of Custody and  
13 Withhold?

14 MR. WEEDMAN: Objection.

15 THE COURT: Sustained.

16 BY MR. KIRSANOV:

17 Q In this document, there are not an adequate number of  
18 CEL tokens under assets to meet the liabilities of Custody  
19 and the Withhold, are there?

20 MR. WEEDMAN: Objection, Your Honor.

21 THE COURT: Sustained.

22 BY MR. KIRSANOV:

23 Q Mr. Galka, how many CEL are shown there under assets?

24 A The number that I see there is -- appears to be  
25 1,184,948. Although I would say that this is a document

1 that I have not seen before, so I'm just reading what is --  
2 what I see appearing on the screen.

3 Q Thank you, Mr. Galka. Could you tell me what it says  
4 under liabilities for CEL and under Withhold for CEL?

5 A Yeah, liabilities I see negative one million, nine  
6 hundred -- or excuse me, ninety-seven thousand, one, seven,  
7 four, and Withhold, I see 402,804.

8 Q Mr. Galka, does -- do the assets reflect lower than  
9 the liabilities?

10 MR. WEEDMAN: Objection, Your Honor.

11 THE COURT: Sustained.

12 BY MR. KIRSANOV:

13 Q Mr. Galka, would it be safe to say the liabilities are  
14 1.5 million or thereabouts?

15 MR. WEEDMAN: Objection, Your Honor.

16 THE COURT: Sustained. I don't -- you know, I  
17 don't understand what you're asking.

18 MR. KIRSANOV: I'm trying to ask if effectively  
19 the assets held were less than the liabilities.

20 MR. WEEDMAN: Your Honor --

21 THE COURT: First off, this document is not in  
22 evidence. That's number one. I'm permitting you to cross  
23 examine from it. Have you seen this document before?

24 THE WITNESS: No, I have not, Your Honor.

25 THE COURT: Let's move on. The document is not in

1 evidence. The witness has not seen it before. I've permit  
2 you to cross examine from this document, but it's not in  
3 evidence.

4 MR. KIRSANOV: Can I submit it into evidence?

5 THE COURT: No. You can't. Let's move along.

6 MR. KIRSANOV: All right, I'm going to move along.

7 BY MR. KIRSANOV:

8 Q Mr. Galka, CEL token did not have a price after  
9 bankruptcy, did it?

10 A Well, it did have a market price, yes, and it does to  
11 this day.

12 Q Okay. CEL token is not actively traded today, is it?

13 A Yes. In fact, I believe it is to some degree.

14 Q The price of CEL token one after bankruptcy was not --

15 A Sorry, Mr. Kirsanov, did you have a question?

16 Q Yes. What was the price of CEL token one month after  
17 bankruptcy?

18 A Oh, I don't have that number off the top of my head.

19 Q Was there a price of CEL token on December 20th, 2022?

20 MR. WEEDMAN: Objection, Your Honor.

21 THE COURT: Sustained.

22 BY MR. KIRSANOV:

23 Q What is the price of sale today?

24 A I don't know the price of it. I think last I checked  
25 it was something in the ballpark of maybe 10 cents, but I --

1 Q Thank you, Mr. Galka. I -- you answered the question.  
2 Did the price of CEL token exceed \$1 after the bankruptcy  
3 day?

4 A Yes, I believe it did.

5 Q Did the price of CEL token exceed \$2?

6 A Yes, I believe it did.

7 Q Did it exceed \$3?

8 A It may have. I don't recall what it reached at a peak,  
9 but I do recall it being above \$2. It may have gone higher  
10 than that.

11 Q Did it surprise you that the CEL token rose in price  
12 following bankruptcy?

13 A Well, I would say yes to the extent that had you asked  
14 me to speculate ahead of time whether the price would go up  
15 or go down, I certainly would have chosen down. That being  
16 said, in a dislocated market like this --

17 Q Mr. Galka, thank you.

18 THE COURT: Don't interrupt the witness when he's  
19 answering. Did you finish your answer?

20 THE WITNESS: Just to finish out the last piece,  
21 in a dislocated market like that, much like the GameStop  
22 stock, very crazy things can happen. So it was not all  
23 altogether shocking to see the price go up after bankruptcy.

24 BY MR. KIRSANOV:

25 Q Thank you, Mr. Galka. Would it be important to

1 determine the price of an asset following a bankruptcy?

2 A I'm sorry. What's the question, Mr. Kirsanov?

3 Q Would it be important to determine the price of an  
4 asset following a bankruptcy?

5 MR. WEEDMAN: Objection, Your Honor.

6 THE COURT: Overruled.

7 BY MR. KIRSANOV:

8 A Is it important. I don't feel that I'm qualified to  
9 answer whether -- the importance of determining the price.

10 Q Well, Mr. Galka, if there's a bankruptcy and you have  
11 an asset, you do want to determine the price of that asset;  
12 is that correct?

13 A Well, it's my understanding that the Court wishes to  
14 know the value of the asset, not necessarily the market  
15 price.

16 Q Would it be important to determine the price of that  
17 asset a month after bankruptcy?

18 A I don't know, Mr. Kirsanov.

19 Q Do you have an analysis on the price of CEL post-  
20 bankruptcy?

21 A Do I have an analysis? I've seen the price of it post-  
22 bankruptcy. I don't recall any explicit analyses.

23 Q Does your pricing opinion apply on the price of CEL  
24 token after the bankruptcy filing day?

25 MR. McCARRICK: Objection.

1 THE COURT: Sustained. He doesn't give an opinion  
2 about the price. Any more questions, Mr. Kirsanov?

3 MR. KIRSANOV: Yes, sir.

4 THE COURT: Let's move along.

5 BY MR. KIRSANOV:

6 Q You were not aware that the proposed Chapter 11 plan  
7 has the CEL token settlement at 25 cents, were you?

8 A I have heard that number mentioned but I'm not familiar  
9 with the details.

10 Q You were not aware that the CEL Custody token deposit  
11 claims are excluded in the CEL token settlement, were you?

12 A No, I do not believe so.

13 Q You are not aware that the Custody CEL tokens found in  
14 the Custody program have been ruled on to be owned by the  
15 creditor, were you?

16 MR. KIRSANOV: Exhibit 3, please? May I request  
17 permission for the witness to see that?

18 THE COURT: All right, Mr. Kirsanov, what he's  
19 described as Exhibit 3 is Page 2 of 6 of ECF Docket No.  
20 3694. It's "CEL token price since bankruptcy, trading  
21 view," is what it's labeled.

22 BY MR. KIRSANOV:

23 Q Mr. Galka, are you familiar with a chart such as this?

24 A Yes, this looks like a candlestick chart.

25 Q Would you consider the crypto market volatile?

1 A Sure. Compared to traditional financial markets, yes,  
2 absolutely.

3 Q You answered my next question. Thank you. Was the CEL  
4 token volatile prior to the freeze date?

5 A Compared to traditional financial assets, yes.

6 Q Was the CEL token volatile -- excuse me. Was the CEL  
7 token volatile prior to the bankruptcy date?

8 A Was it volatile? Well, if we're comparing to  
9 traditional financial markets such as the S&P500 or the  
10 market for government treasuries, I would say --

11 Q Respectfully --

12 THE COURT: Don't interrupt, Mr. Kirsanov. He  
13 hadn't finished his answer.

14 BY MR. KIRSANOV:

15 A Yeah, I would say that that all cryptocurrencies are  
16 volatile, if that's the measure.

17 Q Was the CEL token volatile a month after bankruptcy?

18 A Yes.

19 Q Does the CEL token continue to be volatile?

20 A Over what time horizon?

21 Q Since bankruptcy day.

22 A I can't say. I can say that it was volatile in the  
23 period shortly after the petition date, but I have not  
24 examined the volatility in the entire period since then.

25 Q In this exhibit, does the CEL token appear to be over

1 \$5 after the bankruptcy filing?

2 A Yeah, it looks like one of the intraday prices did  
3 exceed \$5, yes.

4 Q This would suggest a higher intrinsic value than the  
5 bankruptcy filing value of 81 cents, correct?

6 MR. McCARRICK: Objection. It's not in evidence.

7 THE COURT: Sustained.

8 BY MR. KIRSANOV:

9 Q You stated that you assist others in finding market  
10 opportunities; is that accurate?

11 A Yeah, that's correct.

12 Q For a CEL token holder, not on Celsius at the date of  
13 bankruptcy, this would have presented a selling opportunity,  
14 wouldn't it?

15 MR. McCARRICK: Objection.

16 THE COURT: Sustained.

17 BY MR. KIRSANOV:

18 Q Did you make an assessment to determine if I had  
19 financially participated in the short squeeze?

20 A I'm sorry. Could you repeat that one, please?

21 Q Did you make an assessment to determine if I had  
22 financially participated in the short squeeze?

23 A You in particular, Mr. Kirsanov?

24 Q Correct.

25 A No, not to my knowledge.



1 MR. KIRSANOV: Your Honor, may I enter any of  
2 these into evidence?

3 MR. McCARRICK: Objection.

4 THE COURT: Sustained --

5 MR. McCARRICK: No --

6 THE COURT: There's no foundation.

7 MR. KIRSANOV: Okay. Thank you for your testimony  
8 today, Mr. Galka. Your Honor, I have no further questions.  
9 Thank you.

10 THE COURT: Thank you, Mr. Kirsanov. Anybody else  
11 wish to cross examine?

12 MR. DAVIS: Yes, Your Honor.

13 THE COURT: Mr. Davis.

14 MR. DAVIS: Thank you, Judge.

15 BY MR. DAVIS:

16 Q Good morning, Mr. Galka.

17 A Good morning, Mr. Davis.

18 Q Would you say that when preparing your expert report,  
19 it was created and submitted in a professional manner, free  
20 of any bias, undue influence, or undisclosed conflicts?

21 A Yes, I would.

22 Q Are you sure about that, as you are about all of the  
23 conclusions and statements you made in your report to date,  
24 meaning both your expert report and your supplemental  
25 declaration?

1 MR. McCARRICK: Objection.

2 MR. WEEDMAN: Objection.

3 THE COURT: Sustained.

4 BY MR. DAVIS:

5 Q You have stated prior here today about Alameda Research  
6 invested in your company. How much was that investment?

7 A I don't recall the dollar figure. It was less than 1  
8 percent of the company at the time. We were raising our  
9 Series A which was about a \$12 million fundraise. They put  
10 in about \$200,000. To date, we've raised about close to \$27  
11 million, so it's a fairly small portion of the investment.  
12 I said \$200,000; I don't know that that's necessarily the  
13 exact number, but something in that ballpark.

14 Q Could it have been \$500,000?

15 A No, it was not \$500,000.

16 Q Okay. Did you disclose the Alameda Research  
17 relationship to the examiner and the UCC before you were  
18 engaged?

19 A Yes. Yeah, this was disclosed in a document, I believe  
20 the document was filed in October, but this was disclosed  
21 prior to that.

22 Q Are you aware of Alameda Research's relationship with  
23 FTX?

24 A Well, I'm aware that the two organizations have a very  
25 close relationship. I don't know specifically what that

1 relationship is, whether one is the parent and the child or  
2 -- but yes, I'm aware that they are closely affiliated.

3 Q Do you know that Sam Bankman-Fried owns both entities?

4 A I don't know the ownership structure of those two  
5 entities.

6 Q Seeing that Alameda Research gave you capital  
7 investment, does Alameda Research have any influence,  
8 control, or input in how you operate your company or conduct  
9 your research?

10 A No.

11 Q Have you ever had any communications with Sam Bankman-  
12 Fried in the two years?

13 A No. I've never had any communications with Sam Bankman-  
14 Fried.

15 Q How much stock options or debt instruments in your  
16 company does Alameda Research or FTX possess?

17 A Zero.

18 Q Are there any board members or officers of your company  
19 that were selected or appointed by Alameda Research or FTX?

20 A No.

21 Q Did you know of a company called Cherokee Acquisitions?

22 A Yes.

23 Q Are you aware that Cherokee Acquisitions has been  
24 involved in buying and selling Celsius (indiscernible) at  
25 significant discount, 20 to 30 cents on the dollar since

1 August 2022?

2 A No --

3 MR. McCARRICK: Objection.

4 BY MR. DAVIS:

5 Q Does your company or your company's board of directors  
6 have any relationship with Cherokee Acquisitions?

7 A Well, I -- if we're talking about organizational  
8 structure, I'm not sure. The owner of Cherokee Acquisitions  
9 was an investor in our -- one of our early rounds. So, yes,  
10 there is a relationship but I don't know if it's, the entity  
11 that participated was Cherokee or if it was just him in his  
12 personal capacity, as I sit here.

13 Q You know an individual by the name of Vladimir  
14 Jelisavcic?

15 A Yes.

16 Q J-E-L-I-S-A-V-C-I-C, for the record.

17 A Yes. Yes.

18 Q Is Vladimir Jelisavcic an investor, shareholder, or  
19 board member of Elementus

20 A Yeah, he was one of our early investors.

21 Q So he's on your board?

22 A No, he's not on our board.

23 Q Was he ever on your board?

24 A Yes. I believe it was early on for a short while.

25 Q What time period?

1 A I don't recall, as I sit here. He participated in our  
2 friends and family round, which was a very small early round  
3 that we had raised before we had built the product, which I  
4 believe was back in, I think --

5 Q -- a year?

6 A I'm sorry?

7 THE COURT: Can you tell him the year?

8 BY MR. DAVIS:

9 Q Can you give us a timeframe. Year.

10 A The year was 2018 when we closed that round. I don't  
11 recall --

12 Q So --

13 THE COURT: Mr. Davis, allow the witness to answer  
14 questions before you ask your next question.

15 MR. DAVIS: Sorry, Judge.

16 THE COURT: Mr. Galka, had you finished your  
17 answer?

18 BY MR. DAVIS:

19 A I'm sorry, could you repeat the question again, Mr.  
20 Davis?

21 Q Is mister -- what time period was Vladimir Jelisavcic  
22 on your board?

23 A I really don't recall. It was -- yeah, I really don't  
24 recall. It was 2018, was when we closed that round. I  
25 don't recall the board movements.

1 Q -- fall, summer, spring of 2018?

2 A I believe it was spring of 2018 was when we closed that  
3 fundraising round and when we formed the company, so that  
4 would have been around the time that he joined the board. I  
5 don't recall. The makeup of the board had shifted several  
6 times after that. It's been several years since he has been  
7 on the board; although, don't recall the exact date.

8 Q Was he the founder of Cherokee?

9 A Was he the founder of Cherokee? Yes, I --

10 Q Correct.

11 A -- believe so.

12 Q Did you or Elementus purposely create a false and  
13 overly negative representation of Celsius' bankruptcy  
14 situation to encourage creditors to sell their Celsius claim  
15 to Cherokee Acquisitions at deflated prices to Vladimir  
16 Jelisavcic as a board member and apparently have a financial  
17 interest?

18 MR. McCARRICK: Objection.

19 THE COURT: Sustained. Mr. Davis, if you want to  
20 ask --

21 MR. DAVIS: Understood, Your Honor.

22 THE COURT: -- questions, they better be  
23 appropriate and not compound.

24 MR. DAVIS: I'll move on.

25 THE COURT: Do you have any more questions?

1 MR. DAVIS: Yes, I do.

2 BY MR. DAVIS:

3 Q Are you familiar with Shoba Pillay?

4 A I'm sorry, who?

5 THE COURT: Shoba Pillay.

6 BY MR. DAVIS:

7 A No.

8 Q The examiner.

9 THE COURT: She was the examiner in Celsius.

10 THE WITNESS: Yeah, I --

11 THE COURT: -- partner at Jenner and Block --

12 THE WITNESS: Okay. Okay. The name didn't ring a  
13 bell, but yes, I understand now who she is.

14 BY MR. DAVIS:

15 Q Did you provide information to Shoba Pillay for the  
16 examiner's final report?

17 A Yes, I believe we did.

18 Q Does the information you provided in the examiner  
19 report match the information you provided both in the Max  
20 Galka expert report and the Max Galka supplemental  
21 declaration?

22 A I would assume so, although I have not reviewed it  
23 recently to check. I don't know what has changed in that  
24 time, so I can't say that definitively.

25 Q Mr. Galka, can lien tokens have value?

1 A Lien tokens. Yeah, I would say so.

2 Q Can they have significant value?

3 A Yes, sure. There are examples where they can have  
4 significant value.

5 Q Do you know the value of Dogecoin? For example, the  
6 market cap of Dogecoin, which is entirely a new coin, do you  
7 know what the market cap of Dogecoin is, which has zero  
8 utility?

9 A No, not offhand. I know I'm fully fairly familiar with  
10 Dogecoin. That one is a very popular one in this ecosystem.  
11 Elon Musk has tweeted about it several times. I know that  
12 the value is quite substantial.

13 Q Does 8.5 billion -- does 8.5 billion market cap sound  
14 about what it is today?

15 MR. WEEDMAN: Objection.

16 THE COURT: Sustained.

17 BY MR. DAVIS:

18 Q Mr. Galka, can you describe what action would someone  
19 have needed to take in order to short CEL token on FTX?

20 MR. McCARRICK: Objection.

21 MR. WEEDMAN: Objection.

22 THE COURT: Sustained.

23 BY MR. DAVIS:

24 Q With your expert trading background, are you familiar  
25 with how short selling an asset can lower the market price



1 value of a particular asset?

2 A Yes.

3 Q In your investigations and analysis for the expert  
4 report, did you or are you aware about the moment of the  
5 pause on June 12th, 2022 the amount of open short positions  
6 against CEL token on FTX exploded from 8 million short  
7 positions to over 20 million short positions?

8 MR. McCARRICK: Objection.

9 THE COURT: Sustained.

10 BY MR. DAVIS:

11 Q Are you aware that --

12 THE COURT: You're not -- Mr. Davis. You can't  
13 testify now. If you want to ask questions, you can ask  
14 questions.

15 MR. DAVIS: Sure.

16 BY MR. DAVIS:

17 Q Mr. Galka, can you turn to -- can you please turn to  
18 and read from Page 47 of your report, No. 156?

19 THE COURT: I'm sorry, which page, Mr. Davis?

20 MR. DAVIS: Forty-seven, Your Honor. Item No.  
21 156.

22 MR. McCARRICK: I think that's the docket where  
23 the --

24 BY MR. DAVIS:

25 Q Yeah, 47 of 83.

1 A So this would be numbered Page 409?

2 Q It's the docket number, yes, numbered Page 40.

3 A Yeah. Okay.

4 THE COURT: Go ahead. Ask your question.

5 BY MR. DAVIS:

6 Q Mr. Galka, in your explanation of a short squeeze, you  
7 say it is a condition that triggers rapidly rising prices  
8 when a coin or a token has a significant number of short  
9 sellers, meaning it's being heavily shorted and lots of  
10 investors are betting it will go down. Can you tell us what  
11 happens when those short sellers are wrong and the price  
12 begins to rise?

13 A I'm sorry. Could you repeat the question, please?

14 Q Mr. Galka, in your explanation of a short squeeze, you  
15 say it is a condition that triggers a rapidly rising prices  
16 when a coin or token has a significant number of short  
17 sellers.

18 THE COURT: It actually says, "in a stock or other  
19 tradeable security." So if you're going --

20 MR. DAVIS: I mean --

21 THE COURT: -- from his report, read it  
22 accurately.

23 MR. DAVIS: Sure.

24 BY MR. DAVIS:

25 Q Mr. Galka, in your explanation of a short squeeze, you

1 say a short squeeze is a condition that triggers rapidly  
2 rising prices in a stock or other tradable security.

3 A Yes.

4 Q Can you tell us what happens when those short sellers  
5 are wrong and the price begins to rise?

6 A What happens in a typical short squeeze?

7 Q Correct.

8 A Well, I think a lot of different things can happen. So  
9 we're talking hypotheticals here. But if we're kind of  
10 talking about the prototypical short squeeze such as  
11 GameStop, what would happen as the price begins to rise is  
12 that people with a short position need to post margin  
13 because to cover the liability of the position that's moving  
14 against them.

15 At some point, people run out of money to be able to  
16 post margins, so they're forced to go into the market to buy  
17 the asset back and cover their short, which drives the price  
18 up and creates more pressure for the additional people that  
19 have the open short positions. You quite commonly will see  
20 other market participants come in, deliberately trying to  
21 push the price up, seeing an opportunity to profit by  
22 squeezing out these shorts and the price can go up extremely  
23 high in some cases.

24 Q Thank you. In order to short an asset, do you borrow  
25 that asset from an exchange?

1 A Well, yeah. Typically when you're shorting an asset,  
2 you are borrowing it from somebody who owns the asset and in  
3 exchange, you are giving them some sort of collateral,  
4 usually cash. And then you sell that asset into the market  
5 and later you buy it back, hopefully at a lower price.

6 Q What happens when you sell the asset into the market?

7 MR. McCARRICK: Objection.

8 MR. DAVIS:

9 Q Does the price go down?

10 THE COURT: If you can answer it, go ahead.

11 BY MR. DAVIS:

12 A It could.

13 THE COURT: Mr. Davis --

14 BY MR. DAVIS:

15 Q -- then you buy back that asset?

16 THE COURT: Mr. Davis, I'm giving you another ten  
17 minutes and then --

18 MR. DAVIS: Okay.

19 THE COURT: -- your examination is over.

20 MR. DAVIS: Okay.

21 THE COURT: Go ahead.

22 BY MR. DAVIS:

23 Q Would you agree that the term funding rate in this  
24 context refers to the amount of money it costs to keep a  
25 leverage trading position open?

1 MR. WEEDMAN: Objection.

2 THE COURT: Sustained.

3 MR. DAVIS: One second, Your Honor.

4 BY MR. DAVIS:

5 Q Did you and your team receive the discovery from  
6 FTX.org, the product of a subpoena that was issued by this  
7 Court?

8 A Yes, we did receive the -- a series of documents  
9 produced from FTX. Yes.

10 Q One (audio glitch), Mr. Galka. Mr. Galka, please turn  
11 to Page 72 of your expert report titled, "Analysis of  
12 Company CEL purchases, data versus rewards, and other  
13 transactions."

14 A Mr. Davis, this is numbered Page 64? Is that right?

15 Q Yes, Page 72 of your report.

16 MR. WEEDMAN: -- 72 on --

17 THE COURT: Yes.

18 THE WITNESS: Yeah. Okay.

19 THE COURT: Page 64 of the numbered page, the  
20 bottom of the page.

21 MR. WEEDMAN: Thank you, Your Honor.

22 BY MR. DAVIS:

23 A Okay, Mr. Davis, I have it open.

24 Q Mr. Galka, on Page 72 of your report, it indicates that  
25 during the period January 2020 to April 2021, the company

1 was a net seller of about 23 million CEL tokens, meaning the  
2 company sold 23 million more CEL tokens than it purchased.  
3 Is that correct?

4 MR. WEEDMAN: Objection.

5 THE COURT: Sustained.

6 BY MR. DAVIS:

7 Q Please turn to page 19 of your report.

8 THE COURT: Which page number are you using, at  
9 the top or the bottom?

10 MR. DAVIS: The top.

11 BY MR. DAVIS:

12 A Okay. I have it open.

13 Q Are you aware that during the same exact period from  
14 January 2020 to April 2021 where your report shows on Page  
15 19 Figure 3 that CEL token rose in price from 15 cents to  
16 over \$6?

17 MR. WEEDMAN: Objection.

18 THE COURT: Overruled.

19 BY MR. DAVIS:

20 A Yes, I -- that -- I don't see the price at its lowest  
21 point, but yeah, it goes from something that's -- looks like  
22 a matter of cents up to what appears to be in the ballpark  
23 of \$8.

24 Q Do you have any explanation for how the price of CEL  
25 token could rise from -- by over 4,000 percent from the

1 period of January 2020 to April 2021, in a period where  
2 Celsius was selling an additional 23 million CEL tokens?

3 MR. WEEDMAN: Objection, Your Honor.

4 THE COURT: Sustained.

5 BY MR. DAVIS:

6 Q Mr. Galka, additionally, can you confirm that your  
7 report shows on Page 72 between May 2021 to July 2022, the  
8 company purchased a net 25 million XSL (audio glitch)?

9 MR. WEEDMAN: Objection, Your Honor.

10 THE COURT: Overruled. He's referring to Page 72  
11 of 83. There's a column for company buybacks. If you're  
12 able to answer the question, go ahead.

13 BY MR. DAVIS:

14 A Yeah, I'm sorry, what was the question, Mr. Davis?

15 Q Can you confirm that your report shows on Page 72  
16 between May 2021 through July 2022, the company purchased a  
17 net 25 million excess CEL tokens?

18 A So this is Page 72, numbered at the top?

19 Q 72 of 83, correct.

20 A Yeah, and I'm sorry, could you repeat the question  
21 again? The number you mentioned, I didn't see here.

22 THE COURT: It doesn't show --

23 MR. DAVIS: (indiscernible).

24 THE COURT: -- and it requires the map.

25 MR. DAVIS: It's his expert report, Judge. I

1 thought he was --

2 THE COURT: Mr. Davis -- are you able to answer  
3 the question, Mr. Galka?

4 MR. GALKA: I didn't follow the question, Your  
5 Honor.

6 THE COURT: He wants to know -- what's the date  
7 range you're asking about? Mr. Davis, what date range are  
8 you asking about their purchase?

9 MR. DAVIS: Oh, I'm sorry, May 2021 to July 2022.

10 THE WITNESS: Okay. And your question is?

11 THE COURT: He wants to know how many they -- how  
12 many they repurchased, the company bought back during that  
13 period, May '21 to July '22.

14 THE WITNESS: Yeah, I see the numbers here. I'm  
15 not so good at arithmetic to be able to sum those up in my  
16 head.

17 THE COURT: Ask your next question, Mr. Davis.

18 BY MR. DAVIS:

19 Q Mr. Galka, in your opinion, do changes in the price of  
20 major assets like Bitcoin and Ethereum affect smaller assets  
21 like CEL token?

22 THE COURT: You're going to have to ask your  
23 questions more slowly, Mr. Davis. I have a hard time  
24 following.

25 MR. DAVIS: Sure. Sorry.



1 BY MR. DAVIS:

2 Q Mr. Galka, in your opinion, do changes in the price of  
3 major assets like Bitcoin and Ethereum affect smaller assets  
4 like CEL token?

5 A Yes, certainly there's some correlation between them.  
6 Yes.

7 Q Do you take into consideration the price movements of  
8 major assets like Bitcoin and Ethereum and how they may  
9 affect smaller assets like CEL token?

10 A No, not directly.

11 Q Mr. Galka, you said the market became dislocated at the  
12 time of the pause and that a lot of volatility occurred  
13 between the pause and the petition date.

14 A Yes, that's right.

15 Q Isn't it true that crypto markets are extremely  
16 volatile?

17 A Sure, relative to traditional financial markets, yeah,  
18 absolutely.

19 Q What's the volume of CEL token on June 11th, 2022, the  
20 day before the pause?

21 A Sorry. Could you repeat the question please, Mr.  
22 Davis?

23 Q What was the volume of CEL token on June 11th, 2022,  
24 the day before the pause?

25 A I don't number -- don't know that number off the top of

1 my head.

2 Q What was the volume of CEL token on the date of the  
3 pause?

4 A I don't know the volume numbers off the top of my head,  
5 Mr. Davis.

6 Q Okay. Is it correct that your report indicates at the  
7 bottom of Page 72 that Celsius' net CEL token position was  
8 only 1.8 million CEL tokens or 0.28 percent of the total 693  
9 million CEL token supply from January 2020 to July 2022?

10 A Pardon, I'm not following.

11 THE COURT: I don't see that in the chart. Is  
12 there some place that you're pointing to on the chart, Mr.  
13 Davis?

14 MR. DAVIS: Yes, Your Honor. Bottom right, 1.886.

15 THE COURT: What's your question?

16 BY MR. DAVIS:

17 Q Is it correct that your report indicates at the bottom  
18 of Page 72 that Celsius' net CEL token position was only 1.8  
19 million CEL tokens or 0.2 percent of the total 693 million  
20 CEL token supply from January 2020 to July 2022?

21 A No, I would say that the net position was substantially  
22 larger than that.

23 Q Why do you have this 1.8 million number on your  
24 document?

25 A I'm sorry, I don't understand the question, Mr. Davis.

1 Are you wondering about --

2 Q What does -- on the bottom right of Page 72, what does  
3 this 1.8 million number represent?

4 A That represents the difference between the company  
5 buybacks minus the interest and the net OTC.

6 Q Is it your testimony that Celsius manipulated the  
7 entire CEL token market by purchasing a net 1.8 million CEL  
8 tokens, as reflected on the bottom right of your -- of Page  
9 72 on your report?

10 A I'm sorry, can you -- could you repeat the question,  
11 please?

12 Q It is their testimony that Celsius manipulated the  
13 entire CEL token market by purchasing a net 1.8 million CEL  
14 tokens?

15 A No --

16 Q Over the 31-month period of January 2020 to July 2022.

17 A No. No, I would say that -- well, manipulation, I  
18 don't know the legal definition of manipulation, so I would  
19 rather not use that term as part of my testimony.

20 Q I'm --

21 THE COURT: -- Mr. Davis, do not interrupt.

22 BY MR. DAVIS:

23 A The -- my first opinion was with respect to Celsius'  
24 buying activity and how it affected the market price. I  
25 would say that out of all the different opinions that I've

1 put here that one is really kind of the, just really the  
2 backdrop because at the time of the pause, the market became  
3 dislocated what. What I intended to demonstrate was that  
4 the price of CEL token was never really a reliable indicator  
5 of its underlying value. That being said, the arguments and  
6 all the other opinions with respect to the price on the  
7 petition date really does not depend on that first opinion.

8 THE COURT: Thank you, Mr. Davis. Your time is  
9 up.

10 MR. DAVIS: Your Honor --

11 THE COURT: -- take a recess --

12 MR. DAVIS: -- few more questions.

13 THE COURT: -- until 11:15. We'll resume at  
14 11:15. If there's anybody else on Zoom who wishes to  
15 examine, I will recognize you then.

16 MR. WEEDMAN: Your Honor, could you instruct Mr.  
17 Galka --

18 THE COURT: Yeah, don't talk to anybody --

19 THE WITNESS: Okay.

20 THE COURT: -- about your testimony.

21 THE WITNESS: Okay, Your Honor. Yeah.

22 (Recess)

23 CLERK: All rise.

24 AUTOMATED VOICE: Recording in progress.

25 THE COURT: Please be seated. All right. We're

1 back on the record and Mr. Galka, you're still under oath.

2 THE WITNESS: Okay.

3 THE COURT: Does anybody else wish to cross  
4 examine Mr. Galka?

5 MR. ABREU: Yes, Artur Abreu, pro se creditor.

6 THE COURT: Mr. Abreu, go ahead.

7 BY MR. ABREU:

8 Q Good morning, Mr. Galka.

9 A Good morning, Mr. Abreu.

10 Q In your declaration, you said you have 15 years of  
11 experience, which includes trading complex derivatives at  
12 Credit Suisse, Deutsche Bank, and nine years of experience  
13 trading financial instruments. This is correct?

14 A Yes. Yes, that's correct.

15 Q You also found the Elementus (indiscernible) company  
16 that specializes in reading blockchain data?

17 A Yes, that's correct.

18 Q Is it fair for me to conclude that you have a  
19 significant or are comfortable speaking, even if just in a  
20 broader sense, about concepts of cryptocurrency derivatives,  
21 in the case of derivatives from crypto exchanges?

22 A Conceptually, sure. I can't speak to the specifics,  
23 derivatives that various exchanges had or how the mechanics  
24 work, but conceptually, certainly, yeah.

25 Q We have an understanding of perpetual products provided

1 by most (indiscernible)?

2 MR. McCARRICK: Objection. I couldn't understand.

3 THE COURT: Could you just ask that again, slowly?

4 I had trouble understanding.

5 BY MR. ABREU:

6 Q Do you have understanding of perpetual projects which  
7 is a derivative provided by crypto exchanges, by most crypto  
8 exchanges?

9 A Perpetual swaps? Is that what you're referring to?

10 Q Perpetual products which includes perpetuals positions  
11 there are -- that don't have a closing date.

12 THE COURT: Mr. Abreu, I'm having difficulty  
13 understanding what you're asking.

14 MR. ABREU: Yeah. Okay, I will give -- can I give  
15 the context of my question?

16 THE COURT: Sure, go ahead.

17 MR. ABREU: So my question is that there was  
18 significant positions on the derivative sites of CEL token  
19 which influenced the price. And I'm just trying to  
20 understand --

21 THE COURT: Let me ask, do you agree with that  
22 much of the question, that trading derivatives with CEL  
23 token influenced the price.

24 THE WITNESS: I --

25 THE COURT: -- that was the question.

1 BY MR. ABREU:

2 A Yeah, I -- it would not be surprising if it did. I  
3 would not say conclusively that it did. I don't know that  
4 it did, but it's certainly possible.

5 Q Did you -- so let me go back to your declaration.

6 MR. ABREU: I'm going to refer, Judge, by the  
7 document page, so the PDF number.

8 THE COURT: Okay.

9 MR. ABREU: Which, give me just one moment to --

10 THE COURT: Sure.

11 MR. ABREU: -- look at mine as well. S

12 BY MR. ABREU:

13 Q So on Page 25 of your expert report --

14 THE COURT: Are you talking about the supplemental  
15 expert report?

16 MR. ABREU: No, no, no. The expert report, not  
17 the supplemental. Docket No. 3580.

18 BY MR. ABREU:

19 Q So an eight -- in the eight-point analysis of data from  
20 FTX --

21 A Okay. Yes, I have it open.

22 Q Okay. So under the eight, analysis of data from FTX.  
23 on the sub-point which is 90, I understand that certain  
24 creditors and other parties in these cases have indicated  
25 that there were significant short positions open on FTX

1 exchange in the picture from before the pause to after the  
2 petition date. The FTX Debtors also produced information  
3 showing borrowing positions on the FTX exchange from May  
4 2022 to the petition date, as well information with respect  
5 to the accounts that placed those short positions.

6 THE COURT: Okay --

7 BY MR. ABREU:

8 Q -- which are discussed in further detail in this  
9 report. Where in this report --

10 THE COURT: Just stop for a second.

11 MR. ABREU: Sorry.

12 THE COURT: You had a lot of information that's  
13 not in evidence, and I want to see whether Mr. Galka -- do  
14 you know the information that Mr. Abreu is referring to?

15 THE WITNESS: Yeah, so I'm looking at No. 90 and  
16 I'm hearing you read out what's there at No. 90 about the  
17 short position opened on FTX. Yes, that I'm familiar with.

18 THE COURT: Okay.

19 THE WITNESS: And that the FTX Debtors, they  
20 produced information with respect to borrow positions on the  
21 exchange. I'm familiar with that information as well.

22 THE COURT: Go ahead, Mr. Abreu.

23 BY MR. ABREU:

24 Q Yeah, but in this point, you say, "which are discussed  
25 further in detail in this report." What are you referring



1 that is in detail in this report?

2 A As I sit here, I don't recall where it's discussed in  
3 further detail. I'm looking just to -- scanning through the  
4 pages. I see it mentioned here in 97 --

5 THE COURT: What 97?

6 THE WITNESS: But I --

7 THE COURT: Paragraph No. 97?

8 THE WITNESS: Yes, Paragraph No. 97, just right on  
9 the next page. In short, I don't know all the specific  
10 places where it's referred to in the report.

11 BY MR. ABREU:

12 Q At no point in this report do you provide any data that  
13 was subpoenaed by FTX relating to the short positions,  
14 correct?

15 A That sounds correct, yes.

16 Q Why not?

17 A Why -- I don't have an answer for that one.

18 Q But didn't you just say that you're going to report in  
19 detail in this document, but you did not provide such  
20 detailed information?

21 A Well, the last clause of Paragraph 9 says, "which are  
22 discussed further in further detail in this report." So I -  
23 - there are other places in the report where this is  
24 discussed in more detail, but your question was about the  
25 underlying data which does not appear in the report.

1 Q So you're basically saying that you do not provide any  
2 detail, correct?

3 A No, I'm saying that I do not believe that the  
4 underlying full data is in the report, but there is -- it's  
5 discussed in further detail, as it's mentioned here.

6 Q Is it fair to say that you should have mentioned that  
7 because you do report about the price (indiscernible) CEL  
8 but never produced the short information that you got that  
9 data from? Would be a fair assessment that you should have  
10 provided?

11 A I'm sorry, could you repeat the question, please, Mr.  
12 Abreu?

13 Q Will it be a fair assessment that if you are mentioning  
14 the price of CEL or at least showing the charged positions  
15 and that you -- that you have that data from subpoena,  
16 shouldn't been inserted here on this document? I said it --  
17 go ahead. Go ahead.

18 A Your question is about whether the raw data should have  
19 been included in the document? I --

20 Q Yes.

21 A -- can't answer that one. I don't know.

22 Q Because you just replied to me that the derivatives or  
23 the perpetuals do have an impact in price, but you do not  
24 provide any information about that, correct?

25 MR. WEEDMAN: Objection, Your Honor. Think that

1 misstates his prior testimony.

2 THE COURT: He can answer the question.

3 BY MR. ABREU:

4 A Yeah. What you're referring to right now is the  
5 underlying data that we received from FTX and that we  
6 examined for the opinion written here. That underlying  
7 data, the full data set, I do not believe is in the report.  
8 What the clause that you referenced here says is that --

9 THE COURT: Where are you reading from?

10 THE WITNESS: This is Paragraph 90 at the very  
11 end, the last --

12 BY MR. ABREU:

13 Q Are the -- Paragraph 90?

14 A Yes.

15 THE COURT: Go ahead.

16 BY MR. ABREU:

17 A Which was the one I believe that you were referring to,  
18 where it ends --

19 Q Okay.

20 A -- by saying, "as well as information with respect to  
21 the accounts that placed those short positions which are  
22 discussed in further detail in the report." Nowhere in  
23 there does it say --

24 Q So --

25 A -- anything about providing the full underlying data

1 that we examined.

2 Q Okay, so where is the information respective to these  
3 accounts?

4 MR. WEEDMAN: Objection, Your Honor. Asked and  
5 answered.

6 THE COURT: Sustained.

7 MR. ABREU: Okay. Can you -- Mr. Otis put an  
8 exhibit, one of letters to the Court. It's Docket 2882.  
9 Could the Court provide this to Mr. Galka?

10 THE COURT: One of the counsel is bringing that up  
11 now, Mr. Abreu, so you just have to wait for a minute.  
12 Okay?

13 MR. ABREU: Of course. Thank you. Thank you.

14 THE WITNESS: Thank you.

15 THE COURT: All right, so a copy of ECF 2882 has  
16 been provided to the witness and to me, and I believe other  
17 counsel have it as well. Go ahead, Mr. Abreu.

18 BY MR. ABREU:

19 Q Could you go to Page 10 of the PDF?

20 THE COURT: Ten of 37?

21 MR. ABREU: Exactly.

22 BY MR. ABREU:

23 A Okay, I have it open here.

24 Q So this is the data that I took from FTX. They  
25 provided also short position data before they went bankrupt.

1 The data that you received a subpoena, can you confirm if  
2 this data here which is also from FTX, I do make some  
3 treatments on Excel, but can you speak to the general  
4 understanding and what you recollect from the data that you  
5 got from FTX, if those charts which have a time stamp, which  
6 is (indiscernible) time, if you recall seeing, for example,  
7 the reported landing of CEL which can be perceived as the  
8 short condition? Can you recall these values or with that  
9 data that you received?

10 MR. WEEDMAN: Objection, Your Honor.

11 THE COURT: Let me ask you first. Have you seen  
12 before now the data that's on Page 10 of 37 of ECF 2882?

13 THE WITNESS: Well, it appears to show the short  
14 position --

15 THE COURT: What I want to -- have you seen it  
16 before?

17 THE WITNESS: No, I have not.

18 BY MR. ABREU:

19 Q You have not?

20 A This particular table, no. I have not seen it before.

21 Q I'm not referring to a particular table, but the values  
22 on the table.

23 THE COURT: I'm not going to have him interpreting  
24 a document he hasn't seen before.

25 MR. ABREU: Is, just the values, that they should

1 match those that he received from the subpoena, so should be  
2 straightforward.

3 MR. McCARRICK: Objection.

4 MR. WEEDMAN: Objection, Your Honor.

5 THE COURT: Sustained.

6 MR. ABREU: Okay, can you move to the Page 9 of 37  
7 of the same documents.

8 THE COURT: Nine of 37.

9 MR. ABREU: Yes.

10 BY MR. ABREU:

11 Q So this first picture shows the funding rights of  
12 perpetuals. Can you see it, Mr. Galka?

13 A Yes, I can.

14 Q Do you see the -- on June 11th, the funding rate of FTX  
15 -- and you can correct me if this is wrong -- was as  
16 reported by, I believe it's CoinGecko -- sorry. If you look  
17 on the Page 8, I took the link where it is coming from.  
18 It's from CoinGlass. And this refers to the funding rate of  
19 the derivatives between 20 -- 31 of May to July 12th. So  
20 but I didn't make a question. Mr. Galka, do you see that  
21 funding, that negative 1.77?

22 MR. WEEDMAN: Objection, Your Honor.

23 MR. McCARRICK: Object to foundation.

24 THE COURT: Sustained. Have you seen this chart  
25 before?

1 THE WITNESS: No, I have not, Your Honor.

2 BY MR. ABREU:

3 Q From the data that you got subpoenaed from FTX,  
4 (indiscernible) to the funding right from the derivatives  
5 products?

6 A You're asking me to recall the -- all the different  
7 columns and -- that we received in the data from FTX?  
8 Offhand I --

9 Q Yes --

10 A I don't recall.

11 Q Around this date, so we're talking June 11. So this is  
12 before the pause.

13 THE COURT: Mr. Abreu --

14 BY MR. ABREU:

15 Q Do you recall --

16 THE COURT: Mr. Abreu.

17 MR. ABREU: Yes.

18 THE COURT: You can't use -- if he hasn't seen it  
19 and it's not in evidence, I don't know where these charts  
20 came from or what it is, so I'm sustaining the objection to  
21 the questions about it. It may be that -- well, I don't  
22 know what it is.

23 MR. ABREU: The picture, it's on the previous  
24 page, it shows the source.

25 THE COURT: That is not getting it into evidence.

1 Your statement about it is not the foundation that's  
2 required in order to introduce this into evidence.

3 MR. ABREU: Thank you. Thank you, Your Honor. So  
4 I will rephrase it.

5 BY MR. ABREU:

6 Q Mr. Galka, did you ever spotted any unusual funding  
7 rates on the perpetuals or derivatives from FTX, from your  
8 data that you requested that were open and were affecting  
9 the price before the pause, so before June 13th?

10 A Sorry, can you repeat the question one more time,  
11 please?

12 Q From the data that you received from FTX, did you  
13 receive data pertaining to the derivatives that they -- that  
14 they had on the products of sale which you say that  
15 influence also the price or could influence the price?

16 A Yes. We looked at data regarding the derivatives, if  
17 that's your question.

18 Q Was there an unusual short and negative funding right,  
19 which means that there is an imbalance towards the short  
20 side before the pause?

21 A Well, I'll -- speaking generally, we examined this data  
22 very, very closely and we did not identify anything unusual  
23 in the data.

24 Q So in your report, you talk between the June 13 until  
25 the petition date. Let me just go back to one of your



1 pictures. So back to Mr. Galka's expert reports. On Page  
2 22 of the PDF, did you see the Figure 6 of Page 22 of Mr.  
3 Galka expert report.

4 THE COURT: Is this the supplemental report?

5 MR. ABREU: No, no. Every time that I refer to  
6 the expert report, I'm referring to the first one and not  
7 the supplement.

8 THE COURT: I have it open I see on Page 22 Figure  
9 9, customer employee --

10 MR. WEEDMAN: Your Honor, sorry, it's Tab 3, if  
11 you look at 22 of 83 at the top.

12 THE COURT: All right.

13 MR. ABREU: Okay, it's Figure 6.

14 THE COURT: Okay. I'm there. Go ahead.

15 THE WITNESS: Yeah.

16 THE COURT: Ask your question.

17 BY MR. ABREU:

18 Q So, Mr. Galka, you start by mentioning or showing here  
19 the candles, which is the price starting on June 13,  
20 correct?

21 A Yes, that's correct.

22 Q But as you (indiscernible) stated, the price of  
23 perpetuals can have a significant impact on the price, yet  
24 you do not put some extra days before there's this timeline.  
25 Is there a reason for this?

1 A I'm sorry, could you repeat -- please repeat the  
2 question, Mr. Abreu?

3 Q Why haven't you added some days before June 13 on this  
4 chart, as you understand when you are dealing with market  
5 moving events, as you refer, there usually information that  
6 gets leaked. The company can stop making communications.  
7 They can (indiscernible) can sell their assets and this  
8 usually has already an effect on the price. All right?  
9 Isn't that a fair assessment?

10 MR. McCARRICK: Objection.

11 THE COURT: Sustained. Let me ask you this, Mr.  
12 Galka.

13 THE WITNESS: Yes, Your Honor.

14 THE COURT: Why didn't you include in Figure 6 on  
15 Page 22 of 83 any date for the period before June 13th,  
16 2022?

17 THE WITNESS: Sure. Well, what this chart is  
18 really supposed to show is the dislocation of the market.  
19 So it was at the time of the pause that the dislocation  
20 really began, and this chart this chart with these  
21 candlesticks demonstrates just the extreme volatility that  
22 the price took between those two periods.

23 THE COURT: Did you examine volatility for a  
24 period -- for some period before June 13th, 2022?

25 THE WITNESS: Yes, we did examine that, yes.

1 THE COURT: And what, if any, conclusions did you  
2 draw -- over what period did you look at, and what, if any,  
3 conclusions did you draw?

4 THE WITNESS: I believe we looked all the way back  
5 to the beginning of 2022, possibly a bit further back. The  
6 volatility until very close to the pause date was fairly in  
7 line with other crypto assets. There is a chart elsewhere  
8 in this opinion that shows the volatility over time compared  
9 to Bitcoin and Ethereum. In the period leading up to the  
10 pause, that was when rumors were already starting to  
11 circulate regarding the potential insolvency of Celsius, so  
12 I would say that -- if we're being technical, I would say  
13 that the market started to be come dislocated shortly before  
14 the pause. It was really at the pause was when the  
15 dislocation became extremely exacerbated, but as I recall,  
16 it was maybe a week or two before that market was showing  
17 signs of dislocation.

18 MR. ABREU: Judge, can I say that --

19 THE COURT: Ask the question, Mr. Abreu. Ask your  
20 next question.

21 BY MR. ABREU:

22 Q What data do you -- do you provide on this report that  
23 shows that before June 13th the price was not dislocated?

24 THE COURT: That's not what he just said.

25 MR. ABREU: It's a question, because he said --

1 THE COURT: Do you have anything in your report  
2 showing what, if any, volatility there was prior to June  
3 13th, 2022?

4 THE WITNESS: Yes. Allow me to just thumb through  
5 here and find the chart that speaks to this.

6 BY MR. ABREU:

7 A So, Mr. Abreu, if you flip to Page 44 of 83, or the  
8 numbered page 37 -- at the top, you see --

9 Q Page 44 of the PDF? Okay, I'm there.

10 A Yes. Yep, so Figure 12 at the top of the PDF shows the  
11 volatility of daily price appreciation in CEL increased  
12 post-pause. So, you'll see three charts in there. There is  
13 a chart showing Bitcoin and what its daily volatility looks  
14 like, and it's a -- on the same scale, it's fairly constant  
15 across the timeline. Same with Ether. And CEL also looks  
16 very similar until you get until around sometime what  
17 appears to be early to mid-May, and you can see there that  
18 the fluctuations start to grow.

19 Q So, you're referring that there is dislocation between  
20 before -- the price you previously stated before, right?  
21 And you can see on this, on your graphic -- so, on June 1  
22 until July 1, it's very difficult to understand or to  
23 correlate here what you're referring to, because it's very  
24 important to understand if there was already price  
25 dislocation before what you stated, because --

1 THE COURT: You're going to have to leave your  
2 editorial comments out. You can ask questions, but you're  
3 not testifying.

4 MR. ABREU: Of course, Your Honor. I'm sorry.

5 Q Do you believe on this table it's easy to understand if  
6 there was CEL price dislocation before June 13th?

7 A Well, so, in my opinion, if there was dislocation  
8 prior to that, that would really only add -- bolster the  
9 opinion that I'm making here that the market prices were not  
10 reliable as any kind of indicator of the intrinsic value.  
11 So, as far as when the dislocation officially began, I don't  
12 see that as being relevant to any of my opinions. If you  
13 look at the chart, just to finish what it is we're looking  
14 at here, the red line that goes vertical in the CEL, that  
15 was the date of the pause and you can see very clearly just  
16 eyeballing it how the volatility went to very extreme levels  
17 shortly after the pause.

18 Q So, volatility means that it can go up and down,  
19 right? It can go to a very large number and a very low  
20 number.

21 A Yes.

22 Q But --

23 A Yes.

24 Q The question -- let me rephrase it. So, in the table  
25 that you showed previously -- the graph. Let me go back to

1 it. You start on June 13, but that doesn't show the  
2 previous price, which can influence the interpretation or  
3 the overall picture of the dislocation. Because if you see  
4 the price was maybe near 81 cents, it went down to your 35  
5 cents that you (indiscernible) the two. That'd be a fair  
6 value -- fair market value at the time.

7 MR. WEEDMAN: Objection.

8 MR. ABREU: And then --

9 THE COURT: Sustained.

10 MR. ABREU: Apologies.

11 BY MR. ABREU:

12 Q The graph that you showed does not show the previous  
13 days, which I think is important to paint a picture.

14 MR. WEEDMAN: Objection.

15 THE COURT: Sustained. Mr. Abreu, just ask  
16 questions.

17 BY MR. ABREU:

18 Q Okay. Let's go to your report again, Page 19 of the  
19 PDF. On the Figure 3, do you see this table -- this graph  
20 which shows the CEL price, correct?

21 A Yes.

22 Q You (indiscernible) let me state this is the CEL price  
23 performance, so you basically are taking the first price it  
24 was traded, then you put the chart and you put those  
25 (indiscernible) and create this chart, correct? It's purely

1 based on the price.

2 A Yes, this is a time series of the CEL token price.

3 Q Why didn't you compare with similar tokens like VGX?

4 Because out of context, this doesn't say much --

5 MR. WEEDMAN: Objection.

6 THE COURT: Sustained. Why didn't you compare --

7 MR. ABREU: Why does --

8 THE COURT: Why didn't you compare it to other CEL

9 tokens -- other tokens, not only CEL?

10 MR. ABREU: Judge, can I just say --

11 THE COURT: Stop, Mr. Abreu. I asked the

12 question.

13 MR. ABREU: Yes, sir.

14 THE COURT: I'd like an answer.

15 THE WITNESS: On this one? Well, Your Honor, this

16 chart was provided just for context to give a picture of

17 what the CEL price -- the token price looked like over time.

18 I don't believe this chart itself was meant to articulate

19 any kind of specific argument.

20 THE COURT: Thank you. I would ask you to look at

21 Pages 44 of 83. We just looked at 45 of 83 and 46 of 83.

22 We looked -- you explained your chart for CEL on Page 44.

23 THE WITNESS: Mm-hm.

24 THE COURT: Your chart on Page 45 deals with

25 trading volume. Does that -- and I see the spike in May in

1 trading volume.

2 THE WITNESS: Mm-hm.

3 THE COURT: And what, if any -- what conclusions  
4 do you draw from the spikes in trading volume?

5 THE WITNESS: Oh, sure. I can explain this in  
6 more detail, Your Honor. When a market becomes dislocated,  
7 there are certain hallmarks that are almost always the case.  
8 One is that you will see extreme volatility -- GameStop --  
9 you would see the same. So, this was -- that's what's  
10 illustrated by the data in Figure 12, and there we compared  
11 it to Bitcoin and Ethereum, just as a point of reference  
12 that the amount of volatility that's taken place here, even  
13 in the context of cryptocurrency, was quite extreme. So,  
14 just eyeballing that, you can see that something was going  
15 on funny around the time of the pause and afterward.

16 The trading volume -- typically, during a market  
17 dislocation, the trading volume could increase or it could  
18 decrease, but usually you will see some sort of change  
19 because the market starts operating in a different manner.  
20 GameStop, the volume went up enormously and that was the  
21 case here, was that at around the time of the pause, the  
22 volume -- daily trading volume of CEL token increased  
23 enormously from the period before, and in the last chart,  
24 what we're looking at is the bid ask spread.

25 THE COURT: Which is on Page 46 of 83.



1 THE WITNESS: Yes, thank you, Your Honor. That's  
2 right. So, Figure 14. What this shows is a third indicator  
3 examining the period leading up to the pause, and the period  
4 afterward. Bid ask spread is a measure of the liquidity of  
5 an asset. So, that's the difference between where the  
6 market is going to buy it versus where the market is willing  
7 to sell it. So, in a dislocated market where there's a lot  
8 of information asymmetry and people don't really know where  
9 to -- you know, where the market really is, you will  
10 typically see a widening of the bid offer spreads. People  
11 are nervous and are scared, and liquidity decreases  
12 substantially, which is consistent with what you see here.

13 THE COURT: Thank you. Go ahead, Mr. Abreu.

14 BY MR. ABREU:

15 Q So, Mr. Galka, in this chart that you just referred,  
16 the trading volume of CEL token pre and post pause -- which  
17 volume are you referring to? Is it the spot, includes  
18 perpetuals, just perpetuals? What type of volume are you  
19 referring to here?

20 A This was the trading volume on FTX, which was the  
21 trading venue that had the largest amount of volume.

22 Q That was not my question. My question -- is this  
23 volume referring to spot CEL, which is the real underlying  
24 asset, or was it referring to the perpetuals process, which  
25 is a derivative which you said can influence the price?

1 A It's referring to the spot trading volume on FTX.

2 Q Do you know if the perpetuals volumes usually exceed  
3 the volume of the underlying spot?

4 A I don't know, Mr. Abreu.

5 Q Do you know if there were millions in volumes --  
6 millions of dollars in volumes traded on the perpetuals side  
7 when it comes to CEL token?

8 MR. MCCARRICK: Objection.

9 THE COURT: Sustained.

10 BY MR. ABREU:

11 Q Were you aware of any data that shows that the volume  
12 was significant on the perpetuals (indiscernible)?

13 A No, Mr. Abreu.

14 Q You are -- you are experienced in derivatives, right?

15 A Yes, that's right.

16 Q So, why would you not include any volume about the  
17 perpetuals and derivatives when it comes to this volume  
18 (indiscernible) of CEL which you just referred to as an  
19 (indiscernible) price?

20 A Well, these three charts, Mr. Abreu, were meant to  
21 illustrate in clear graphical format that at the time of the  
22 pause, something changed with this market, that this market  
23 is no longer trading under normal conditions. So, these are  
24 the three indicators that we selected to make that point.  
25 We could have selected a number of other indicators, but in

1 my opinion, these three indicators make the point clear  
2 enough.

3 THE COURT: Mr. Abreu, on my watch it's 11:47.  
4 I'm giving you another thirteen minutes, until 12:00 noon --

5 MR. ABREU: Okay.

6 THE COURT: -- for cross-examination.

7 MR. ABREU: Roger that. I will move on. And let  
8 me just -- give me one minute here.

9 BY MR. ABREU:

10 Q When it came -- when it comes to the market maker of  
11 CEL, which was Wintermute, you say that you are not -- let  
12 me just go to it. So, on Page 23 of the PDF, of your expert  
13 report, on Point 75, you say, "We analyzed Celsius..." --  
14 I'm going to quote. "We analyzed Celsius's market-making  
15 agreement with Winternote and then compared historical  
16 spreads of the market-making agreement. The guidance in  
17 this agreement was to maintain 1 percent to 5 percent.  
18 Elementus was unable to verify the desired spread -- that  
19 desired spread was maintained or enforced during the  
20 lifetime of the Wintermute market activities -- market  
21 agreement." Did you receive any data of Wintermute and  
22 their market-making agreements?

23 A Could you repeat the question, please?

24 Q Did you receive data of Wintermute about their market-  
25 making agreement and their bids and -- their bid spreads?

1 MR. WEEDMAN: Objection.

2 MR. ABREU: Because you --

3 THE COURT: Overruled.

4 BY MR. ABREU:

5 A Well, we received the market-making agreement itself.

6 Is there -- I'm sorry if I don't understand your question,

7 Mr. Abreu. Is --

8 Q It says you were unable to verify. What do you mean by  
9 this? So, was that insufficient?

10 A Well, we analyzed the agreement and the summary of what  
11 we found in there was what's written here, that the guidance  
12 in the agreement was to maintain spreads of 1 percent to 5  
13 percent as far as the bid offer spread. We were not able to  
14 verify whether those numbers were maintained or not.

15 Q In your experience, do you -- would it be fair to say  
16 that market-makers use -- make heavy use of derivatives in  
17 order to maintain a price and fight volatility? Is that a  
18 fair assessment?

19 A Speaking generically, I would not say that as a general  
20 matter, no. No.

21 Q Let's say that Wintermute used derivatives in order to  
22 fight -- in order to maintain -- to control volatility on  
23 CEL.

24 A I don't know. I do not see any reason why they would  
25 have, but I also don't know that they didn't.

1 Q In your view, do derivatives -- are derivatives  
2 important to keep a neutral hedge, meaning that you don't  
3 have -- you're not overexposed to a strategy?

4 A Well, a market-maker like Wintermute, they -- the  
5 market-maker agreement, the reason they were out there, was  
6 to provide liquidity for participants who wanted to buy or  
7 sell the token. So, if they were making markets in just the  
8 token, I do not see off the top of my head any reason why  
9 they would trade anything other than the token. I can  
10 imagine some hypothetical scenarios in which they might also  
11 be trading the derivatives, but based on my knowledge, I see  
12 no reason why they would have, necessarily.

13 Q It's fair to assume Wintermute being the market-maker,  
14 they will have significant volumes when it comes to the  
15 trading of CEL.

16 A The token or derivatives?

17 Q Both. You can go -- each one.

18 A Well, certainly if they were making markets for the  
19 token, I would expect them to have substantial trading  
20 volume for the token. I can't speak to trading volume of  
21 derivatives.

22 Q Okay. Let's go to Page 28 of your expert opinion,  
23 Figure 8. Tell me when you're there.

24 A Okay, I have it open.

25 Q So, where it says "Celsius Total Net OTC Transactions"

1 with a dollar sign, and this section (indiscernible) says  
2 "OTC Sales", does that refer to the OTC desk sales of CEL to  
3 potential investors, users, in an OTC desk?

4 A I'm sorry, can you -- could you please repeat the  
5 question?

6 Q Did the OTC --

7 THE COURT: Tell me what it is you're  
8 communicating in Figure 8 in the column "OTC Sales".

9 THE WITNESS: Yeah, those were sales of the CEL  
10 token in terms of dollar amounts by the OTC desk.

11 BY MR. ABREU:

12 Q So, is it fair to assume that Celsius received liquid  
13 crypto or unstable form -- unstable coin forms of  
14 (indiscernible) VTC portions of CEL which netted \$351  
15 million? Is that a fair assessment?

16 MR. WEEDMAN: Objection, Your Honor.  
17 (indiscernible)

18 THE COURT: Overruled. Can you answer the  
19 question?

20 BY MR. ABREU:

21 A Yeah, could you repeat the question, please, Mr. Abreu?

22 Q Is it a fair assessment that the OTC desk of Celsius  
23 sold in a total amount of sale over \$350 million?

24 A Yes. The OTC desk sold \$351 million of CEL.

25 THE COURT: In a three-year period.

1 THE WITNESS: In the three-year period, yes.

2 Thank you, Your Honor.

3 BY MR. ABREU:

4 Q Is that -- and below, where it says "Celsius Total Net  
5 OTC Transactions", that cardinal which refers to the units  
6 of sale, the OTC sales is basically what you -- so, both in  
7 terms of CEL units, correct?

8 A Yes, that's correct.

9 Q Would it be a fair assumption in order to figure out  
10 the average costs that OTC users (indiscernible) to Celsius  
11 to buy their token -- would it be a fair calculation to get  
12 this 351 million and divide by the total units of CEL sold  
13 in this three-year period (indiscernible) average cost for a  
14 CEL buyer?

15 A Yes.

16 Q So, do you know what is the average?

17 A Well, I (indiscernible) and running some back-of-the-  
18 envelope arithmetic, it looks like it's somewhere in the  
19 ballpark of between 3.5 and 4 dollars.

20 THE COURT: Averaged over the three years.

21 A Yeah, around -- yes, averaged over the three years.

22 Q Exactly, around 3 -- 73 percent. Would you, by reading  
23 this -- this data, would you say that because of the prices  
24 in 2021 there was a large number of (indiscernible)  
25 transactions by dollar amount that would increase

1 significantly the average price cost to these OTC buyers?

2 So basically doing 270 divided by 53.

3 A Your question is whether the average price in 2021 was  
4 larger than the average price for the other years?

5 Q Yes, and it benefited from the increased market cap of  
6 BTC. They were reaching higher prices as well.

7 A So, could you please restate the question, please?

8 Q I'm just saying it's a fair assessment that from 2021  
9 the CEL purchase price also correlated with the Bitcoin  
10 price. The market was -- the market cap had increased.

11 MR. WEEDMAN: Objection, Your Honor.

12 (indiscernible)

13 THE COURT: Overruled. If you're able to answer  
14 it, please do. If you can't, just tell us.

15 BY MR. ABREU:

16 A Yeah, I -- pardon me, Mr. Abreu. I don't understand  
17 the question.

18 A Do you think the CEL price benefited from the  
19 appreciation of Bitcoin in 2021?

20 A Yes, probably.

21 A Okay. Just for context, the average cost here is 5.09.

22 THE COURT: You can't testify, Mr. Abreu.

23 MR. ABREU: Apologies. I'll (indiscernible) what  
24 I just said.

25 BY MR. ABREU:



1 Q Does the OTC buys reflect the buybacks from  
2 the company on that same table?

3 A Does it reflect the buybacks from the company? There  
4 is some overlap, but not necessarily.

5 Q Does this include the interest buybacks or just the OTC  
6 purchase by the company? Does it include the interest --  
7 the interest, as I understand, you refer it to the year that  
8 CEL -- that Celsius network was provided to users.

9 A Yes, that's correct.

10 Q So, the OTC buys here include that -- that  
11 (indiscernible) the interest, or it does not?

12 A No, this is explicitly buys from the OTC desk.

13 Q So, you -- so, we can conclude that Celsius overall on  
14 this graph made 150 -- 160 million by selling CEL.

15 A No, I would not draw that conclusion, if that's your  
16 question.

17 Q Okay.

18 THE COURT: You don't know whether these reflect  
19 buys and sells by people in the market or whether they're  
20 Celsius. It doesn't show that.

21 THE WITNESS: No, it does not show that. This is  
22 strictly buys and sells by the OTC desk. Your question, Mr.  
23 Abreu, was with respect to how much money they made, and I  
24 would say that the 160 number doesn't represent profit.

25 BY MR. ABREU:

1 Q Okay, so let me rephrase it. The value only reflects  
2 the net amount from the OTC sales and buys, correct?

3 A Yes, that's right.

4 THE COURT: Two more minutes.

5 MR. ABREU: Okay.

6 BY MR. ABREU:

7 Q So, in Page 5 of the document, Exhibit 1, did you  
8 create this table?

9 THE COURT: I'm sorry, what page are you referring  
10 to?

11 MR. ABREU: Page 5 of this same document.

12 THE COURT: Okay.

13 MR. ABREU: Exhibit 1.

14 THE COURT: That's fine.

15 BY MR. ABREU:

16 A Yes, my team and I created this table. That's correct.

17 Q You mention seven insiders who have 98 million worth of  
18 CEL. Correct?

19 A Yes, that's correct.

20 Q Did you tally other insiders and officers, including  
21 former officers and former insiders and their composition of  
22 CEL in this calculation or you just did it for the seven  
23 insiders?

24 A Could you please repeat the question, Mr. Abreu?

25 Q Besides the seven insiders, did you tally other

1 insiders or officers and/or former officers and insiders?

2 A I believe the answer is no. I believe this is the  
3 extent of the insiders that we examined.

4 THE COURT: Finish up (indiscernible) Mr. Abreu.

5 Q Did you ever -- yeah. Did you ever -- the letters  
6 mention before that 81 cents will dilute creditors. Did you  
7 calculate the dilution?

8 MR. MCCARRICK: Objection.

9 THE COURT: I don't understand your question, Mr.  
10 Abreu.

11 MR. ABREU: I'm going to move to another question.

12 THE COURT: No, you're not.

13 MR. ABREU: Did you ever --

14 THE COURT: Your time is up. I'll let you ask one  
15 more question.

16 BY MR. ABREU:

17 Q Do you believe there is significant -- there is a  
18 significant number of creditors that are employees which  
19 receive CEL that are in similar amounts of the seven  
20 insiders?

21 MR. MCCARRICK: Objection, foundation. He  
22 testified he didn't tally it.

23 THE COURT: Do you know the information about the  
24 amount of CEL that other employees other than the seven  
25 received?

1 THE WITNESS: I'm not aware. As far as I know,  
2 these are the only insiders that we have this kind of  
3 information for.

4 THE COURT: Thank you very much for your  
5 questions, Mr. Abreu. Is there anybody else who wishes to  
6 cross-examine?

7 MR. FRISHBERG: Yes, Your Honor, I do. Daniel  
8 Frishberg, pro se.

9 THE COURT: Go ahead, Mr. Frishberg.

10 BY MR. FRISHBERG:

11 Q I have just literally one question. Would you say that  
12 it is more likely than not that the CEL token had a fair  
13 value of zero or close to zero at the (indiscernible) date?

14 A Yes, I would agree with that.

15 MR. FRISHBERG: Thank you. That's all. Thank  
16 you, Judge.

17 THE COURT: Thank you, Mr. Frishberg. Anybody  
18 else wish to cross-examine?

19 UNKNOWN: Your Honor, I just have a statement that  
20 will take ten seconds.

21 THE COURT: Nope. Nope. Is there anybody else  
22 who has not been heard who wishes to cross examine?

23 MR. IOVINE: Yes, Your Honor. Jason Iovine, pro  
24 se creditor.

25 THE COURT: Go ahead, Mr. Iovine.

1 BY MR. IOVINE:

2 Q (indiscernible) this witness can answer this question  
3 or if he did anything, but was there any calculation done on  
4 the distributions if CEL token was at 81 cents?

5 A Not that I'm aware of, Mr. -- I understand that it  
6 certainly impacts how the proceeds are distributed, so I  
7 fully appreciate, you know, the importance of this number.  
8 For my analysis, I did not look at any of the circumstances  
9 with any of the creditors or the distributions. I  
10 restricted my focus on my understanding and interpretation  
11 of the data with respect to what the price was at the time  
12 of the petition.

13 MR. IOVINE: Okay, thank you. That's all I had.

14 THE COURT: All right, anybody else wish to be  
15 heard who wishes to cross-examine? Any redirect?

16 MR. WEEDMAN: No, Your Honor.

17 THE COURT: Any other examination from anyone in  
18 the courtroom? All right, you're excused. Thank you very  
19 much for your testimony.

20 THE WITNESS: Thank you, Your Honor.

21 THE COURT: So, are there any other witnesses that  
22 we're going to hear from today?

23 MS. BRIER: Yes, Your Honor. Debtor defendants  
24 call Robert Campagna to the stand.

25 THE COURT: Okay. Do you have --

1 UNKNOWN: (indiscernible)

2 THE COURT: I'm sorry? Go ahead and call Mr.  
3 Campagna.

4 MS. BRIER: Thank you, Your Honor.

5 UNKNOWN: (indiscernible)

6 MS. BRIER: Good afternoon, Your Honor. Grace  
7 Brier, Kirkland & Ellis, on behalf of debtors and we call  
8 Mr. Campagna to the stand.

9 THE COURT: Thank you very much. If you would  
10 raise your right hand. You'll be sworn, Mr. Campagna.

11 THE WITNESS: Certainly.

12 CLERK: Do you solemnly swear or affirm that any  
13 testimony you're about to give before this court is the  
14 truth (indiscernible)

15 THE WITNESS: Yes, I do.

16 THE COURT: Thank you very much. Please have a  
17 seat. Ms. Brier.

18 MS. BRIER: May I approach with the exhibit  
19 binders?

20 THE COURT: Absolutely.

21 MS. BRIER: (indiscernible)

22 THE COURT: Thank you.

23 THE WITNESS: Thanks.

24 THE COURT: Thank you.

25 UNKNOWN: Is my mic still on?

1 THE COURT: Yes, it is.

2 UNKNOWN: I don't under --

3 THE COURT: Please mute yourself. Ms. Brier, go  
4 ahead.

5 MS. BRIER: Thank you, Your Honor.

6 DIRECT EXAMINATION OF ROBERT CAMPAGNA

7 BY MS. BRIER:

8 Q Good afternoon. Could you please reintroduce yourself  
9 to the court?

10 A Yes. I'm Robert Campagna. I'm the Managing Director  
11 in the restructuring practice of Alvarez & Marsal.

12 Q And can you give a brief summary of your professional  
13 background?

14 A Sure. I've been working at Alvarez & Marsal for 20-  
15 plus years and in the restructuring space for over 25.  
16 Primarily for those 25 years I focused on nothing but  
17 helping large debtor side companies through large  
18 restructurings, much like this one.

19 Q Mr. Campagna, are you certified as a restructuring  
20 advisor?

21 A I'm a certified insolvency and restructuring advisor  
22 and I'm also -- well, inactive -- I'm a CPA.

23 Q Now, how did you first become involved in this case,  
24 this Celsius restructuring, Chapter 11?

25 A The debtors reached out in late June of 2022, post-

1 pause, looking for financial assistance and assistance, you  
2 know, with the severity of the situation they were facing.

3 Q Can you summarize the type of work that you've done in  
4 this restructuring matter?

5 A Much like in most matters, much of our work is focused  
6 on liquidity and cashflow forecasting, cash management,  
7 expense reductions, reducing the size of the workforce,  
8 extending the runway by cutting costs, and then associated  
9 more directly with the restructuring, getting ready for a  
10 bankruptcy filing and the recording required in bankruptcy  
11 and to get out of bankruptcy.

12 Q And turning to the matter and the hearing here today,  
13 can you explain what work you were asked to do with relation  
14 to this hearing specifically?

15 A Yes. With respect to the confirmation hearing, I was  
16 specifically tasked with looking at the best interests test,  
17 performing liquidation analysis, and then certain other  
18 matters related to the confirmation of the plan.

19 Q And did you include the conclusions of the work that  
20 you did and the analyses behind it in your declaration that  
21 you submitted to the Court?

22 A I did.

23 Q That declaration -- if you'd open your binder, please,  
24 to Tab 46 and take a look at that.

25 A Okay.



1 Q If you could please flip to the last page of that  
2 document, Page 27, and confirm that that's your signature.

3 A Yes, that's my electronic signature.

4 Q And is this a true and accurate copy of the declaration  
5 you submitted in this matter?

6 A It is.

7 Q Do you adopt this declaration as your testimony here  
8 under oath today?

9 A Yes, I do.

10 Q Now, now that that's in evidence, I'd like to highlight  
11 a couple points from it today live for the court --

12 THE COURT: Well, it's in evidence if you offer it.

13 Q Your Honor, thank you for reminding me. Move to admit  
14 Exhibit 46 into evidence, Your Honor.

15 THE COURT: Any objections? All right, Exhibit 46  
16 is in evidence.

17 (Exhibit 46 Admitted Into Evidence)

18 Q Thank you. Now I'd like to highlight a couple points  
19 from your testimony before the Court here today, and did you  
20 prepare any slides to assist with your testimony?

21 A We did. We prepared a demonstrative.

22 Q We'll flash that up in a second. Mr. Campagna, can you  
23 please turn to Exhibit 7 in your binder, just the first tab  
24 there?

25 A Okay.

1 Q What is Exhibit 7?

2 A Exhibit 7 looks to be a copy of the liquidation  
3 analysis that was part of the disclosure statement.

4 Q What was your involvement in that liquidation analysis?

5 A I led the team that assisted the debtors in preparing  
6 this analysis.

7 Q And Mr. Young, if you could please turn the screen on  
8 to Page 2 of the demonstrative exhibits, and Your Honor,  
9 we'd mark this as Demonstrative Exhibit 2 for purposes of  
10 this hearing. We filed it on the docket last night.

11 THE COURT: Thank you.

12 Q Mr. Campagna, can you explain what this slide is  
13 showing us here?

14 A This is a summary of the distribution waterfall, and it  
15 shows a distributable value under the plan scenarios, which  
16 are the two left scenarios, which are NewCo, primary path,  
17 and if there were a pivot to the orderly winddown path  
18 compared to a liquidation analysis, the liquidation analysis  
19 that we just referred to in the right column, assuming it  
20 converts into Chapter 7. I would note the two first columns  
21 -- NewCo is quite obvious. That's the NewCo transaction  
22 with Fahrenheit. While named the orderly winddown, Path 2  
23 is really a -- still has the company merging with a public  
24 mining entity, so lots of effort to go into that.

25 Q And the numbers in that liquidation column -- what do

1 those represent?

2 A Those are -- it's a summary of numbers found in the  
3 liquidation analysis that we just referred to.

4 Q Now, I don't want to go through every line item, but  
5 I'd like to focus on one or two of them, starting with  
6 mining. We heard some testimony about that \$565 million  
7 number earlier this week. Can you describe what the  
8 difference is between that number and the \$424 million in  
9 the orderly winddown column?

10 A Sure. 565 was the midpoint of the center evaluation,  
11 which you heard testimony on yesterday, so that simply is  
12 the value they assessed -- the going concern value they  
13 assessed related to the mining value under the Fahrenheit  
14 proposal. Fahrenheit brings a lot of things to the table.  
15 They were our number one choice, our number one bidder, so  
16 obviously they present the most valuable solution for the  
17 company.

18 Very specifically, if you look at the orderly winddown  
19 exhibit, which was also part of the disclosure statement, we  
20 highlighted things like \$100 million of coupons to purchase  
21 rigs in the future, caps on buildout costs of 395,000 per  
22 megawatt, perpetual free lease on software that manages the  
23 energy usage of the rigs and things like that, so losing  
24 Fahrenheit is a -- would be a significant blow to the  
25 company, not that some of those things couldn't be replaced,

1 but we have no definitive agreements in place at the moment  
2 that equate to something similar. So, as we move from the  
3 NewCo transaction to the public miner/orderly winddown, we  
4 assess the 25 percent discount on the value from the center  
5 revaluation.

6 Q Now, we talked about those first two columns. Let's  
7 talk about the last column, that \$88 million number. Can  
8 you explain what that number represents?

9 A Yes. Specifically with mining, that represents an  
10 estimate of what we believe we could sell the fixed assets  
11 for, the mining rigs and the mining facilities. The company  
12 has a Midland, Texas mining site which is composed of four  
13 separate units in close proximity.

14 Q And there have been some objections filed regarding the  
15 assumptions that you made underlying that \$88 million  
16 number. Can you explain some of the assumptions you made  
17 underlying that number and how they relate to the orderly  
18 winddown?

19 A Sure. We looked at an asset-by-asset listing of all  
20 the company's rigs by rig type, met with a management team,  
21 who has extensive knowledge of what the prices paid for  
22 these rigs were, what they could buy them for now. Has some  
23 insights into what they sell for in the used market. Most  
24 of these rigs are one to two years old. Similar to a three-  
25 year-old laptop, they lose their value pretty quickly, and

1 the market's flooded with them at the moment. There's more  
2 rigs than there are ability to -- than there are plugs to  
3 get these units up and running, which is why, you know,  
4 80,000 of the debtor's 120 are up and running today.  
5 We also -- Mr. Kielty yesterday also mentioned -- we had  
6 looked at sales of rigs early on in these cases and he  
7 summarized those yesterday in the range of 350 to 550  
8 dollars per rig is where the offers were that we had  
9 received, and some of those we had executed upon. The  
10 analysis behind this has an average rig price of about \$640.  
11 So, higher than the high end of Mr. Kielty's range.

12 Q I'd like to focus next on the recovery percentage  
13 numbers at the bottom there. Can you explain what those  
14 are?

15 A Yes. Those are the recovery percentages to -- we would  
16 refer to them as the remaining claims classes, but as you  
17 get to the middle of this page, it has distributable value  
18 and then distributions to certain claims. Administrative  
19 claimants get 100 cents, so we show that -- we show those  
20 values that are above the -- sort of what the remaining  
21 claims are and the average recovery to the rest of the  
22 group. But at the end of the day, those are the recovery  
23 percentages to creditors under each of the three scenarios.  
24 So, 67 percent recovery between cryptocurrency and then an  
25 asset value of distributable assets in the NewCo plan and

1 then in the liquidation, that number is 47 -- that  
2 percentage is 47.4 percent recovery.

3 Q And Mr. Campagna, when you assessed these numbers that  
4 we're looking at here, what conclusions did that lead you to  
5 reach?

6 A These conclusions -- these numbers lead me to believe  
7 that this meets the best interests test by class as laid out  
8 in the plan.

9 Q And Your Honor, I'd move to admit Exhibit 7, the  
10 liquidation analysis that Mr. Campagna (indiscernible)

11 THE COURT: All right, any objections? All right,  
12 Exhibit 7 -- Celsius Exhibit 7 is admitted into evidence.

13 (Exhibit 7 admitted into evidence)

14 BY MS. BRIER:

15 Q And Mr. Campagna, if you could turn to the second to  
16 last tab in your -- in your binder there and let me know  
17 when you're there.

18 A I'm there.

19 Q Can you let me know what that is?

20 A This is the supplemental affidavit or just a  
21 declaration that I filed related to confirmation.

22 Q And Your Honor, for purposes of the record, Debtors  
23 have premarked this as Exhibit 70. Mr. Campagna, can you  
24 please turn to the last page of that document?

25 A Yes.

1 Q Is that your signature there?

2 A It is my electronic signature, yes.

3 Q And do you adopt that document under oath as your  
4 testimony here today?

5 A I do.

6 Q Your Honor, I will move to admit that into evidence  
7 this time on my own accord.

8 THE COURT: Hearing no objections, it's admitted.

9 Q Thank you, Your Honor. Mr. Campagna, what is the  
10 subject matter of your supplemental declaration?

11 A The supplemental declaration was in response to  
12 questions the Court raised last week, looking at the CEL  
13 token group as an individual class. The CEL token holders  
14 in the plan as it's laid out today are in several classes.  
15 They're in the one-order group; they're in the earn group;  
16 they're in the custody group; they're elsewhere. So, this  
17 was looking at the CEL token group as a group individually.

18 Q And Mr. Young, if you could please show Demonstrative  
19 1, which is contained in Mr. Campagna's declaration that is  
20 now Exhibit 70. Mr. Campagna, can you --

21 THE COURT: This is the diagram -- Exhibit A on  
22 Page 5 and 6?

23 MS. BRIER: Exactly, Your Honor. Yes, and we also  
24 used a demonstrative exhibit, but it's the exact same thing  
25 (indiscernible)

1 THE COURT: It's in evidence.

2 (Exhibit A admitted into evidence)

3 MS. BRIER: Thank you, Your Honor.

4 BY MS. BRIER:

5 Q Mr. Campagna, can you at high level explain what this  
6 is showing?

7 A Sure. This shows the recovery value to CEL token  
8 holders in dollars under the plan, under the two scenarios  
9 of the plan, and under the liquidation analysis. For the  
10 liquidation analysis, which is the red dotted line, it shows  
11 what CEL token creditors would receive under a increasing  
12 level of assessed value of the -- or assessed price of the  
13 CEL token. For the plan classes or for the two plan  
14 scenarios, the dark blue line represents the NewCo line.  
15 It's fixed, 25 cent price. It's probably -- looks like  
16 about \$44 million of recovery value. And then the orderly  
17 winddown plan, it's the lighter blue line, horizontal --  
18 roughly \$41 million of recovery. And you can see where the  
19 red line intersects those two lines; that's where the best  
20 interests test would exactly be met, where the creditors --  
21 under the plan for the 25 percent value would receive the  
22 same recovery as under a liquidation at different -- at that  
23 price point, which is 34 cents under the orderly winddown  
24 and 36 cents under the NewCo scenario.

25 Q And have you reviewed the supplemental declaration of



1 Mr. Galka and were you in the courtroom during his  
2 testimony?

3 A I did and I was, yes.

4 Q And how does his valuation of CEL token fit within this  
5 analysis that you've performed?

6 A At negligible to zero value. This says there's no  
7 issue with the best interests test as it results -- as it  
8 relates to the CEL token holders.

9 Q Thank you, Mr. Campagna.

10 MS. BRIER: I'll pass the witness at this time.

11 THE COURT: Let me -- I just -- why don't you put  
12 that chart back up.

13 MS. BRIER: Absolutely.

14 THE COURT: The demonstrative.

15 MS. BRIER: Mr. Young, if you could put that back  
16 up, that'd be excellent.

17 THE COURT: Looking at that chart, how much do CEL  
18 holders -- in a liquidation analysis in a Chapter 7 --

19 THE WITNESS: Mm-hm.

20 THE COURT: -- best interests test, how much do  
21 the CEL holders -- what allowed (indiscernible) would they  
22 be entitled to receive in a liquidation?

23 THE WITNESS: That's a good question. I would  
24 turn to the attorneys. I don't quite know what happens in a  
25 liquidation under the plan. I know it's fixed at 25 cents

1 and my understanding is based on Mr. Galka's testimony today  
2 at a near-zero value. I think we would -- I think that's  
3 where we would be leaning as a debtor's side.

4 THE COURT: From this chart, am I supposed to be  
5 able to determine whether 25 cents would satisfy the best  
6 interests test?

7 THE WITNESS: Yes. So, if you look across the  
8 bottom axis, zero is increasing to 81. If you pick the  
9 point where it's roughly 25 cents and, you know, go directly  
10 up to intersect that red line, it would say the value is --  
11 it's well below the dark blue and the light blue lines, so  
12 they're getting far less.

13 THE COURT: All right. Cross --

14 THE WITNESS: And we did this on dollars as  
15 opposed to percents because as you increase the size of the  
16 denominator, it's somewhat circular.

17 THE COURT: Cross-examination.

18 MS. BRIER: Thank you, Your Honor.

19 THE COURT: Thank you very much.

20 MR. KIRSANOV: Yes, hello, Your Honor. Dmitry  
21 Kirsanov, pro se.

22 THE COURT: Go ahead, Mr. Kirsanov.

23 MR. KIRSANOV: Hello, Mr. Campagna.

24 THE WITNESS: Hi.

25 CROSS EXAMINATION OF ROBERT CAMPAGNA

1 BY MR. KIRSAOV:

2 Q Can you explain what the best interests are in  
3 comparison to a Chapter 7 versus an 11?

4 A I don't follow the question.

5 Q What does a Chapter 11 plan have to meet that a Chapter  
6 7 plan wouldn't?

7 MS. BRIER: Objection.

8 THE COURT: Sustained. What is your  
9 understanding, Mr. Campagna, about -- what is the best  
10 interests test?

11 THE WITNESS: The best interests test states that  
12 creditors under the plan can receive no less than they would  
13 receive under a Chapter -- actually, it's the inverse.  
14 Under a Chapter 7 -- whatever the creditors receive under a  
15 Chapter 7, they at least have to receive that amount under  
16 the Chapter 11 plan.

17 THE COURT: Ask your next question.

18 BY MR. KIRSAOV:

19 Q Are you aware the CEL token holders in the custody  
20 class rejected the CEL custody settlement?

21 A No, I'm not.

22 Q Are you aware that the deactivation date pricing for  
23 custody CEL holders is 25 cents?

24 A No, I'm not.

25 Q (indiscernible) bankruptcy values, CEL is valued at 81

1 cents. Is that correct?

2 MS. BRIER: Objection, Your Honor.

3 THE COURT: Sustained.

4 BY MR. KIRSAOV:

5 Q Is the liquidation analysis for pure custody 100  
6 percent?

7 A I don't follow that.

8 Q So, in a Chapter 7 case for pure custody, is the  
9 liquidation value 100 percent?

10 MS. BRIER: Objection.

11 THE COURT: Sustained.

12 BY MR. KIRSAOV:

13 Q Wouldn't the plan currently fail the best interests  
14 tests as it assigns 25-cent deactivation day value to the  
15 CEL custody holder?

16 A I don't believe it does, no.

17 Q Isn't 25 cents less than 81 cents?

18 THE COURT: Mr. Kirsanov, yes, 25 cents is less  
19 than 81 cents, but that's not meaningful. Ask your next  
20 question or I'm going to end your examination.

21 MR. KIRSANOV: Yes, sir.

22 BY MR. KIRSAOV:

23 Q What is the liquidation analysis for general custody,  
24 sir?

25 A What is the percentage recovery under the liquidation

1 for general custody?

2 Q Correct.

3 A 72.5 percent.

4 Q And 72.5 percent of 81 exceeds 25 cents; is that  
5 correct?

6 A I don't follow the question.

7 Q If CEL token is valued at 81 cents and it has a  
8 liquidation in the custody class of 72.5 percent --

9 THE COURT: Mr. Kirsanov, it doesn't have a value  
10 of 81 cents.

11 MR. KIRSANOV: Well, the bankruptcy filing value  
12 is 81 cents.

13 THE COURT: No, sir. At the petition date, it was  
14 trading at 81 cents.

15 MR. KIRSANOV: Correct, so --

16 THE COURT: The testimony is that that was not the  
17 value, the intrinsic value of the CEL token. Ask your next  
18 question or I'll end your examination.

19 BY MR. KIRSAOV:

20 Q Are you aware that CEL token holders can un-  
21 accept their in-kind distributions in Hawaii for a rejecting  
22 class in the first 90 days?

23 MS. BRIER: Objection, Your Honor.

24 THE COURT: Sustained. It's beyond the scope of  
25 the direct. He's not testified about Hawaii or anyplace

1 else.

2 BY MR. KIRSAOV:

3 Q And what is the liquidation analysis for pure custody,  
4 sir?

5 MS. BRIER: Objection. Asked and answered.

6 THE COURT: Overruled. Go ahead. If you can,  
7 answer.

8 BY MR. KIRSAOV:

9 A I believe pure custody is the withdrawable custody  
10 claims today and it's 100 cents, and it's -- it's in-kind,  
11 I'd say --

12 Q (indiscernible)

13 THE COURT: Let him finish his answer, Mr.  
14 Kirsanov.

15 BY MR. KIRSAOV:

16 A The custody -- all the custody numbers are proposed to  
17 be in-kind, so we're actually giving the coin back, so  
18 that's why we're giving all the coin back for the pure  
19 custody, 100 percent of whatever that is, and under the with  
20 -- the general custody, we're giving 72.5 percent of the  
21 coins back. That's what the plan calls for.

22 Q Sir, could I refer to the disclosure statement?

23 A I don't have that in front of me.

24 THE COURT: What is it that you want from the  
25 disclosure statement?

1 MR. KIRSANOV: I'd like to go to the deactivation  
2 date cryptocurrency conversion table.

3 MS. BRIER: Was that included on your -- we'll  
4 grab that.

5 THE COURT: You're going to have to wait, Mr.  
6 Kirsanov. All right, while they're looking for that, at  
7 around 2:00 p.m. there will be an emergency test from FEMA,  
8 and therefore you need to -- when we're back here at 2  
9 o'clock, before that you need to turn off the volume or turn  
10 off your cell phone so that we do not hear the FEMA  
11 emergency alert. Thank you, Deanna, my courtroom deputy.

12 UNKNOWN: Your Honor, I don't think turning off  
13 the volume does it --

14 THE COURT: Well, then, you've got to turn off  
15 your phone. I think that's probably -- and I'd better do  
16 that, too, when I come back from lunch. Were you able to --

17 THE WITNESS: I have a binder with several  
18 documents in front of me and one is titled "Disclosure  
19 Statements".

20 THE COURT: Okay, he has the disclosure statement  
21 in front of him, Mr. Kirsanov. Ask your question.

22 MR. KIRSANOV: Could you locate the --

23 THE COURT: (indiscernible) page number --

24 MR. KIRSANOV: Yes, sir. In Section 84, the  
25 deactivation date cryptocurrency conversion table, could you

1 go there, sir?

2 THE WITNESS: What page is that?

3 THE COURT: Can somebody help out?

4 MS. BRIER: Sure. Mr. Kirsanov, what version of  
5 the disclosure statement are you looking at and what --

6 MR. KIRSANOV: It is the one you --

7 MS. BRIER: Are you referring to (indiscernible)

8 MR. KIRSANOV: It is the one that Kirkland filed  
9 on 9/27, which adjusted the language from -- that the  
10 debtors and UCC would determine a value to 25 cents --

11 MR. KOENIG: Your Honor --

12 THE COURT: Mr. Koenig.

13 MR. KOENIG: It's Chris Koenig from Kirkland &  
14 Ellis for Celsius. I think what Mr. Kirsanov is referring  
15 to is a revised version of the Chapter 11 plan, not the  
16 disclosure statement. That's what was filed on September  
17 27th. We have that language.

18 MS. BRIER: He has the language and I think what  
19 he filed, so I can put that up.

20 MR. KOENIG: We should give that to the witness.

21 MS. BRIER: Yes.

22 MR. KIRSANOV: Thank you.

23 THE WITNESS: So, I understand there may have been  
24 something filed in respect to the plan. This is -- I have  
25 not looked at this. The document dated 10 --



1 MR. KIRSANOV: Yes, sir -- do you have that  
2 document in front of you, sir?

3 THE WITNESS: I have a document in front of me.

4 MR. KIRSANOV: Does it include the deactivation  
5 date cryptocurrency conversion table?

6 THE WITNESS: I see a table. It's not titled, but  
7 -- a table of numbers, coin types.

8 MS. BRIER: Your Honor, for purposes of the  
9 record, we'd just note that this contains excerpts from a  
10 much larger document.

11 THE COURT: Yes.

12 MS. BRIER: And it's not entirely clear --

13 THE COURT: So, what we're looking at is something  
14 Mr. Kirsanov filed as ECF-3688. It's three pages long. It  
15 contains excerpts from various documents and places. Did  
16 you ask your question, Mr. Kirsanov, and we'll see whether  
17 the witness has the information needed to be able to  
18 respond.

19 MR. KIRSANOV: Yes -- yes, sir.

20 BY MR. KIRSAOV:

21 Q Are you aware that the deactivation price for CEL token  
22 in the custody class is 25 cents?

23 A No, I'm not.

24 Q Do you see the amendment on Section 84 on deactivation  
25 date cryptocurrency conversion table?

1 A I do.

2 Q You do. Could you read out the section that it says 25  
3 cents, please?

4 MS. BRIER: Objection, Your Honor.

5 THE COURT: Sustained. I don't know what you're  
6 referring to, Mr. Kirsanov.

7 MR. KIRSANOV: So, on the deactivation date  
8 cryptocurrency conversion table, it says that the  
9 deactivation date cryptocurrency table shall provide that  
10 CEL token is priced at 25 cents if the bankruptcy court  
11 approves the CEL token settlement.

12 THE COURT: That's what the plan provides; that's  
13 correct.

14 MR. KIRSANOV: Correct. I'm --

15 THE COURT: That's not liquidation value. That is  
16 what the plan provides.

17 BY MR. KIRSAOV:

18 Q Is the liquidation value of CEL token in a Chapter 7 81  
19 cents?

20 MS. BRIER: Objection.

21 THE COURT: Sustained.

22 MR. KIRSANOV: What is the liquidation value of  
23 the CEL token under Chapter 7?

24 MS. BRIER: Objection.

25 THE COURT: Do you know, Mr. Campagna?

1 THE WITNESS: I believe we're prevent -- the  
2 company is unable to sell CEL tokens, so we value it at zero  
3 from an asset side. What the claim is I leave up to the  
4 Court and others.

5 BY MR. KIRSAOV:

6 Q Under Chapter 7, are all claims dollarized?

7 THE COURT: I didn't understand your question.

8 MS. BRIER: Objection.

9 THE COURT: Ask it again.

10 BY MR. KIRSAOV:

11 Q If it goes to Chapter 7, are all claims and all classes  
12 dollarized?

13 MS. BRIER: Objection.

14 THE COURT: Sustained.

15 BY MR. KIRSAOV:

16 Q How does -- how is Chapter 7 dollarized?

17 MS. BRIER: Objection.

18 THE COURT: Sustained.

19 BY MR. KIRSAOV:

20 Q How is Chapter 7 dollarized for the individual  
21 creditors?

22 MS. BRIER: Objection.

23 THE COURT: Sustained.

24 BY MR. KIRSAOV:

25 Q Sir, the liquidation analysis of pure custody is 100

1 percent; is that correct?

2 MS. BRIER: Objection.

3 THE COURT: Sustained.

4 THE WITNESS: I believe that --

5 BY MR. KIRSAOV:

6 Q Sir, the -- what is the analysis for pure custody  
7 holders of CEL token?

8 MS. BRIER: Objection.

9 BY MR. KIRSAOV:

10 A Which analysis? Under what --

11 Q Chapter 7.

12 A Under Chapter 7, what is the recovery we've associated  
13 with pure custody?

14 Q Correct.

15 A It's 100 percent. We would still propose to give the  
16 coins back --

17 THE COURT: (indiscernible) give an in-kind.

18 THE WITNESS: We've give an in-kind distribution,  
19 exactly.

20 THE COURT: (indiscernible) was in custody.

21 THE WITNESS: So, pure custody would be given  
22 their coins back.

23 BY MR. KIRSAOV:

24 Q After 90 days, does the plan not call for 25 cents?

25 MS. BRIER: Objection.

1 THE COURT: Sustained.

2 BY MR. KIRSAOV:

3 Q What does the plan call after 90 days if CEL custody  
4 holders do not withdraw their assets?

5 MS. BRIER: Objection.

6 THE COURT: Sustained. This witness is testifying  
7 about the distributions under different scenarios, including  
8 liquidation value.

9 MR. KIRSANOV: Yes, Your Honor, and my point is in  
10 comparison to a Chapter 11, a CEL token holder would obtain  
11 more in the pure custody and custody class under a Chapter 7  
12 than a Chapter 11. Thus, it does not meet the best  
13 interests clause.

14 MS. BRIER: Objection.

15 THE COURT: I hear your argument. I don't think  
16 it's right, but I hear your argument. Ask your next  
17 question. Ten more minutes and I'm cutting you off.

18 MR. KIRSANOV: Your Honor, one second, please.

19 BY MR. KIRSAOV:

20 Q Sir, can you refer to Page 48? That indicates the CEL  
21 token settlement on Section 2.

22 THE COURT: 48 of what?

23 MR. KIRSANOV: Docket 3577, the one filed on 9/27,  
24 which is the one that should be in front of you, sir.

25 MS. BRIER: Your Honor, there's an excerpt of this

1 in that same document he filed, Docket No. 3688.

2 THE COURT: All right. Do you have it in front of  
3 you, Mr. Campagna?

4 THE WITNESS: I'm sorry, which docket number was  
5 it? 3688?

6 MR. KIRSANOV: 3577.

7 MS. BRIER: And for purposes of the record,  
8 there's --

9 THE COURT: It's on Page 2 of 3 (indiscernible)

10 MS. BRIER: -- excerpt of 3577 contained in his  
11 filing on Page -- Docket No. 3688.

12 BY MR. KIRSAOV:

13 Q Could you read out what is highlighted there, sir?

14 MS. BRIER: Objection, Your Honor.

15 THE WITNESS: It's an excerpt of Document 1192.  
16 Page 17 of 22? Is that what we're looking at?

17 MR. KIRSANOV: It should be under the CEL token  
18 settlement --

19 THE COURT: No, it's on Page 2 of his three-page  
20 document under CEL token settlement.

21 THE WITNESS: Okay.

22 THE COURT: He's highlighted some --

23 THE WITNESS: Yes, I see that now.

24 BY MR. KIRSAOV:

25 Q Could you read out the highlighted section, please?

1 MS. BRIER: Objection.

2 THE COURT: I'll read the whole excerpt of it.

3 MR. KIRSANOV: Yes, sir.

4 THE COURT: "Except as provided in Article  
5 3(b)(17), all CEL token deposit claims other than custody  
6 claims that are CEL token deposit claims shall be valued at  
7 25 cents per CEL token (i.e., one CEL token equals a 25-cent  
8 CEL token deposit claim), and shall otherwise receive the  
9 treatment associated with the program in which they were  
10 deployed." What's your question?

11 MR. KIRSANOV: My concern is that --

12 THE COURT: I don't want your concern. I want a  
13 question.

14 MR. KIRSANOV: Okay. Yes, sir. One second,  
15 please.

16 MS. BRIER: Your Honor, just for purposes of the  
17 record, we'd object to the admission of this document.

18 THE COURT: It's not in evidence.

19 MS. BRIER: Thank you.

20 THE COURT: What's your question?

21 BY MR. KIRSAOV:

22 Q What would the CEL custody holder obtain in a Chapter 7  
23 liquidation?

24 A I think that requires a legal determination, but I  
25 believe the testimony you heard today is it's valued at

1     worth -- at zero. We are attempting to give back the coin,  
2     the token itself, so folks are welcome to the tokens that  
3     are in custody. I would -- if your question is, "What do  
4     people who can't take the tokens get?", I assume we would  
5     sell them for zero or not sell the CEL token and ascribe a  
6     zero to it and pass the value on for any remaining points.

7     Q     Wouldn't that fail the best interests test?

8             MS. BRIER: Objection.

9     BY MR. KIRSAOV:

10    A     No, it would show that you'd do much worse under a  
11    liquidation under the current plan where you're being given  
12    25-cent value.

13    Q     The CEL token under Chapter 7 -- is that dollarized?

14             MS. BRIER: Objection.

15             THE COURT: Sustained.

16    BY MR. KIRSAOV:

17    Q     What is the CEL token worth under -- excuse me. What  
18    is the dollar amount for CEL token under Chapter 7?

19             MS. BRIER: Objection.

20             THE COURT: Sustained.

21    BY MR. KIRSAOV:

22    Q     Under Chapter 7, how much is a CEL token worth?

23             MS. BRIER: Objection.

24             THE COURT: Sustained.

25             MR. KIRSANOV: One moment, Your Honor.



1 THE COURT: One more question, Mr. Kirsanov.

2 MR. KIRSANOV: One moment, Your Honor.

3 THE COURT: All right, the examination has  
4 concluded. We're going to -- before anybody leaves, we're  
5 going to take our lunch break, but before doing that --

6 MR. SHEIK: Judge, I have cross.

7 THE COURT: Stop. Anybody else who has not been  
8 heard so far who wishes to cross-examine Mr. Campagna,  
9 please identify yourself now.

10 MR. SHEIK: (indiscernible) pro se -- I mean,  
11 cross-examiner.

12 MR. DAVIS: Otis Davis, cross-examination.  
13 Creditor.

14 THE COURT: Okay. Mr. Davis, Mr. Sheik. Anybody  
15 else on Zoom?

16 MR. ABREU: Artur Abreu. One question.

17 UNKNOWN: (indiscernible)

18 THE COURT: One at a time. Stop.

19 MR. ABREU: Artur Abreu, just to make two  
20 questions, sir.

21 THE COURT: Nope.

22 MR. ABREU: One question?

23 THE COURT: You've already questioned, Mr. Abreu.  
24 No more questions.

25 MR. BRONGE: (indiscernible)

1 THE COURT: Mr. (indiscernible)

2 MR. BRONGE: (indiscernible), pro se creditor.

3 THE COURT: Okay, I'm not -- I want to just get  
4 the names now. Mr. Bronge. Who else? I have Mr. Davis,  
5 Mr. Sheik, Mr. Bronge. Anybody else who has not been heard?

6 MR. PHILLIPS: Yes, Your Honor.

7 THE COURT: Who is that?

8 MR. PHILLIPS: Richard Phillips, pro se. I only  
9 have a few questions.

10 MS. DOW: Yes, Your Honor. Sharon Dow, pro se.  
11 Thank you.

12 MR. UBIERNA: Victor Ubierna, pro so.

13 MR. FRISHBERG: Daniel Frishberg, pro se.  
14 (indiscernible)

15 THE COURT: Hold on. Mr. Frishberg, you asked a  
16 question already. You said you had one question. You've  
17 examined --

18 MR. FRISHBERG: I did not -- I did not examine  
19 (indiscernible) --

20 THE COURT: Okay, you didn't. That's right.  
21 You're correct. Okay, Mr. Frishberg.

22 MR. FRISHBERG: Thank you.

23 THE COURT: I apologize, Mr. Frishberg. Who else?

24 MR. ABREU: Judge, I also did not examine this  
25 witness.

1 THE COURT: Okay, Mr. Abreu. Anybody else?

2 MR. UBIERNA: Victor Ubierna, pro se

3 (indiscernible)

4 THE COURT: I have you, Mr. Ubierna. What I have  
5 so far is Mr. Davis, Mr. Sheik, Mr. Bronge, Mr. Phillips,  
6 Ms. Dow, Mr. Ubierna, Mr. Frishberg, Mr. Abreu. Anyone else  
7 on Zoom?

8 MR. JOHNSON: Michael Johnson, pro se.

9 THE COURT: Hold on.

10 MS. BRIER: Your Honor, Sharon Dow I think also  
11 was on the list.

12 THE COURT: Yeah, I have her.

13 MS. BRIER: Okay, great.

14 THE COURT: I have her down.

15 MR. NOSKOV: Your Honor, Victor Noskov, Quinn  
16 Emanuel, for Pharos.

17 THE COURT: All right. All right, ten people have  
18 indicated that they wish to cross-examine after lunch.

19 We're breaking until 2 o'clock. We're going to go in the  
20 following order: Mr. Davis, Mr. Sheik, Mr. Bronge, Mr.  
21 Phillips, Ms. Dow, Mr. Ubierna, Mr. Frishberg, Mr. Abreu,  
22 Mr. Johnson and Mr. Noskov. We're recessed until 2 o'clock.

23 BAILIFF: All rise.

24 (Recess)

25 THE COURT: Please be seated. All right, court's

1 back in session. Mr. Campagna, you're still under oath.

2 We'll begin with the cross-examination by Mr. Davis.

3 MR. DAVIS: Give me one second, Your Honor.

4 THE COURT: Go ahead, Mr. Davis.

5 MR. DAVIS: Your Honor, (indiscernible) --

6 THE COURT: I'm sorry, I can't hear you. I'm not  
7 able to hear you.

8 MR. DAVIS: (indiscernible)

9 THE COURT: We're not able to hear you, Mr. Davis.

10 MR. DAVIS: Can you hear me now, Judge?

11 THE COURT: Yes, I can hear you now.

12 MR. DAVIS: I'm sorry. Your Honor, I think that  
13 the limiting of my time for cross-examination to seventeen  
14 minutes with respect to Expert Witness Mr. Galka is  
15 prejudicial to my rights as a creditor.

16 THE COURT: Mr. Davis --

17 MR. DAVIS: And also to the other --

18 THE COURT: Mr. Davis, you're cutting in and out.  
19 What kind of microphone are you using?

20 MR. DAVIS: I'm using my headphones, Judge.

21 THE COURT: You're cutting in and out.

22 MR. DAVIS: (indiscernible) headphones that I was  
23 using before. I'm not using anything different --

24 THE COURT: You're going to need to fix your  
25 sound, Mr. Davis.

1 MR. DAVIS: Is it any better now?

2 THE COURT: Only slightly.

3 MR. DAVIS: I'll connect and reconnect.

4 THE COURT: Please begin. We can't hear you if  
5 you're --

6 MR. DAVIS: (indiscernible)

7 THE COURT: We can't hear you if you're speaking.

8 MR. DAVIS: I'm speaking now. I disconnected and  
9 reconnected. Thank you. Your Honor, I think about the  
10 limiting of my time for cross-examination to seventeen  
11 minutes with respect to the expert witness Mr. Galka is  
12 prejudicial to my rights as a creditor, and also the other  
13 36,000 CEL token creditors in this case. And being that I  
14 was not allowed to finish my cross-examination --

15 THE COURT: Mr. Davis --

16 MR. DAVIS: I would like to --

17 THE COURT: Mr. Davis, ask your questions or I'm  
18 going to cut you off.

19 BY MR. DAVIS:

20 Q Mr. Campagna, are you familiar with the claim filed by  
21 the debtors in (indiscernible) bankruptcy related to CEL  
22 token?

23 A No, I'm not.

24 Q Mr. Campagna, have you conducted an analysis of the CEL  
25 token OTC transactions from 2020 to 2022?

1 A No, I have not.

2 Q Do you know if Celsius sold CEL token from its treasury  
3 from 2018 to 2022?

4 MS. BRIER: Objection.

5 THE COURT: Overruled.

6 BY MR. DAVIS:

7 A I do not.

8 Q Mr. Campagna, are you aware of any parties  
9 (indiscernible) CEL token on FTX in 2022?

10 A No.

11 Q Do you agree that Celsius did not purchase and CEL  
12 token from the market after the pause?

13 A I don't have a view on that topic.

14 Q Can you please turn to Page 71 of the Max Galka report.

15 THE COURT: I'm sorry, of what? I can't -- I  
16 didn't hear you.

17 MR. DAVIS: Of the Max Galka report.

18 THE COURT: His initial report or his second  
19 report?

20 MR. DAVIS: His initial report.

21 THE WITNESS: What page?

22 MR. DAVIS: 71.

23 THE WITNESS: Okay.

24 BY MR. DAVIS:

25 Q On Page 71 of the Galka report, in the Difference

1 column, it shows a dollar value of 15.9 million in income  
2 for the month of December 2020, correct?

3 A Mine shows text message strings or something.

4 Q It's in the right column, in the Difference column all  
5 the way to the right.

6 A (indiscernible)

7 Q For the month of December 2020.

8 A I do not see that. Page 71 --

9 THE COURT: Which exhibit number are you looking  
10 at?

11 MR. DAVIS: It's on Docket 3580.

12 MR. COLODNY: Page 71 at the top (indiscernible)

13 MR. DAVIS: 71 at the top. 71 of 83.

14 THE WITNESS: Yeah, there's no ribbon on this  
15 document. Wait -- okay, there was an expert report, then  
16 there's --

17 MR. COLODNY: (indiscernible) 63 on the bottom.

18 THE WITNESS: Okay, we have it.

19 THE COURT: Go ahead.

20 BY MR. DAVIS:

21 Q On Page 71 of the Galka report, in the Difference  
22 column, it shows a dollar value of 15.9 million in income  
23 for the month of December 2020, correct?

24 A I see a difference of -15,911,247.00 reading this page.

25 Q On Page 72 of the Galka report, in the Difference

1 column, it shows that in the month of December 2020, the  
2 company sold a net 6.5 million CEL tokens, correct?

3 A I'm not familiar with this report. Do you want to tell  
4 me the column you'd like me to read to you again?

5 Q Sure. Page 72 --

6 THE COURT: Have you -- excuse me. Have you  
7 reviewed this before?

8 THE WITNESS: No, I haven't.

9 THE COURT: Okay.

10 BY MR. DAVIS:

11 Q Okay, can you turn to Page 19 in the Max Galka report?

12 MS. BRIER: Objection, Your Honor. Foundation as  
13 to this witness's knowledge --

14 THE COURT: Well, let's see what Page 19 is and  
15 then we'll see. This is Page 19 of 83?

16 MR. DAVIS: Correct, 19 of 83.

17 THE WITNESS: Okay.

18 BY MR. DAVIS:

19 Q In the Max Galka report on Page 19, it also shows that  
20 the price of CEL token dramatically increased during that  
21 same period of December 2020. Is that correct?

22 MS. BRIER: Objection.

23 THE COURT: Are you familiar with this report?

24 THE WITNESS: I am not.

25 MS. BRIER: Objection.



1 THE COURT: Objection sustained.

2 BY MR. DAVIS:

3 Q Was most of the CEL token trading volume conducted by  
4 the company denominated in Bitcoin, Ethereum, or Dollar  
5 (indiscernible)

6 MS. BRIER: Objection.

7 THE COURT: Sustained.

8 MR. DAVIS: (indiscernible)

9 THE COURT: The examination of this witness has to  
10 be within the scope of his direct examination. Cross-  
11 examination within the scope of his direct.

12 MR. DAVIS: I'm finished.

13 THE COURT: You're finished? Okay.

14 MR. DAVIS: Yes, I said that two minutes ago. I'm  
15 finished.

16 THE COURT: Mr. Sheik.

17 MR. SHEIK: Thank you, Your Honor. The questions  
18 that I have to ask are general in nature. May I proceed?

19 THE COURT: Yes, go ahead.

20 BY MR. SHEIK:

21 Q Okay, thank you. Mr. Campagna, A&M was responsible for  
22 auditing and determining the value of the debtor's assets  
23 that made up the estate. Is that correct?

24 A No, that's not correct.

25 Q How would you describe the nature of your engagement

1 with the debtors?

2 A First, Alvarez & Marsal is not an audit firm. We don't  
3 conduct audits. We're not an accounting firm. We're  
4 financial advisors for --

5 THE COURT: Just describe what your engagement is.

6 THE WITNESS: We were engaged to assist the  
7 company with liquidity, liquidity management and reporting  
8 requirements pursuant to the bankruptcy code and entering  
9 and exiting Chapter 11.

10 BY MR. SHEIK:

11 Q Okay, and -- but were you -- did A&M provide the Court  
12 and, you know, all the parties involved the financial  
13 documents that you had prepared to basically value the  
14 property of the debtors, such as DNO?

15 A The debtors provided all the financial information. We  
16 assisted the debtors with some of that information.

17 Q Assisted how?

18 A Assisted in compiling the data that existed from the  
19 company's systems, spreadsheets, wherever we could find it.

20 Q Okay. Now, when it comes to the determination of the  
21 value of the liquid assets in CNL and what they were worth,  
22 what according to you was the final number?

23 A I did not conduct evaluation of any assets. I believe  
24 the assets you're referring to were valued by Stout. They  
25 presented their report yesterday, and their witness.

1 Q I see. But to your knowledge, you know, and per the  
2 Campagna declaration, I believe, that one of the reports had  
3 mentioned that it was valued at around \$9.8 billion. Is  
4 that correct?

5 MS. BRIER: Objection.

6 BY MR. SHEIK:

7 A I am not familiar with a 9.8 -- was that a billion-  
8 dollar figure?

9 Q Correct, yes. I did mention billion, yes.

10 A I'm not aware of that figure.

11 Q Okay. Now, if there was a valuation on any of the  
12 properties or the assets of the debtors, when it comes to  
13 crypto or liquid crypto, would they be, you know, based on  
14 petition date pricing?

15 MS. BRIER: Objection.

16 THE COURT: Do you know?

17 THE WITNESS: I don't conduct values --  
18 valuations. I don't know.

19 THE COURT: He doesn't know. Go ahead, ask your  
20 next question.

21 MR. SHEIK: Okay, sure.

22 BY MR. SHEIK:

23 Q So, now I understand, you know, yesterday Mr. Kielty  
24 had provided, you know, the value based on -- as of March  
25 2023, the value of the assets in CNL were marked at \$3.5

1 billion. Are you aware of this?

2 MS. BRIER: Objection. Misstates testimony.

3 THE COURT: Sustained.

4 MR. SHEIK: Okay. I'm going to skip ahead, then.

5 BY MR. SHEIK:

6 Q Okay, so Mr. Campagna, what was the size of the hole,  
7 according to you -- and just to add to it, the -- publicly,  
8 what was reported by Reuters, Bloomberg, Associated Press  
9 and whatnot -- the size of the hole was about \$1.2 billion.  
10 Is that correct according to what your understanding is?

11 THE COURT: Mr. Sheik, I don't understand your  
12 question.

13 MR. SHEIK: Your Honor, the reason I ask that  
14 question is because what's publicly reported was \$4 billion,  
15 but when you look at any of the documents that we've been --  
16 you know, the true value of the size of the hole was 1.2  
17 billion. So, I just --

18 THE COURT: Mr. Sheik, I do not understand your  
19 question. If you --

20 MR. SHEIK: Oh.

21 THE COURT: If you want to refer to specific  
22 documents, we'll see whether that's proper, but in the form  
23 that you've asked it, it's not a proper question.

24 MR. SHEIK: I see what you're saying. Okay, then.  
25 I'll try to rephrase that.

1 BY MR. SHEIK:

2 Q So, according to you, Mr. Campagna, what was the size  
3 of the whole in this bankruptcy?

4 MS. BRIER: Objection.

5 THE COURT: You -- do you understand the question?

6 THE WITNESS: I don't.

7 THE COURT: Ask your next question.

8 THE WITNESS: Okay.

9 BY MR. SHEIK:

10 Q Is the size of the hole \$1.2 billion?

11 MS. BRIER: Objection.

12 THE COURT: When you're referring to the size of  
13 the hole, what are you referring to, Mr. Sheik?

14 MR. SHEIK: The insolvency and that whether, you  
15 know -- why we came into this situation in the first place.

16 THE COURT: I still don't understand your  
17 question. The debtor -- the debtor is insolvent; I  
18 understand. It's liabilities exceed its assets.

19 MR. SHEIK: Right. And you know, then we have a  
20 CNL that was once valued at \$9.8 billion and I'm just -- I'm  
21 trying to get a sense of -- because there's been a lot of  
22 misinformation. I just wanted to ask the right people the  
23 right questions just to get the -- you know, an expert  
24 analysis or at least an opinion on the matter, Your Honor.

25 THE COURT: Ask another question.

1 BY MR. SHEIK:

2 Q Okay. When it comes to the value of the illiquid  
3 crypto assets in CNL post adjustments, which as per Mr.  
4 Kielty yesterday was determined to be \$3.2 billion, would  
5 you say that more than sufficiently covers the \$1.2 billion  
6 shortfall that we have in this insolvency?

7 MS. BRIER: Objection, Your Honor. Misstates  
8 testimony.

9 THE COURT: Sustained.

10 MR. SHEIK: Okay. I'm trying to gather -- Judge,  
11 if you -- Your Honor, if you'd give me just a second, I'll  
12 try and skip over.

13 THE COURT: Okay, go ahead.

14 MR. SHEIK: Thank you.

15 BY MR. SHEIK:

16 Q So, Mr. Campagna, is -- did A&M provide the final  
17 report, or at least in the last few months, the monthly  
18 reports which have, you know, full disclosure on the type of  
19 liquid crypto --

20 (Alarms sounding.)

21 THE COURT: You didn't follow the rules. Please  
22 close it off.

23 MR. SHEIK: Judge, if I may, this is one of my  
24 proudest achievements as actually representing Bloomberg's  
25 assets to actually install an e-notification, which just

1 went off, many, many years ago.

2 THE COURT: Okay. It's the US Trustee. Who  
3 else's phone is going off? Somebody else has their phone  
4 turned on.

5 MR. SHEIK: I'm not in New York anymore, so I  
6 don't think --

7 THE COURT: (indiscernible) -- I'm not going to do  
8 it.

9 (Alarms sounding, crosstalk.)

10 THE COURT: This is not a complicated instruction  
11 to follow, (indiscernible)

12 MR. SHEIK: I hope it's -- I hope it's not me.

13 THE COURT: I'm just surprised they didn't go off  
14 simultaneously.

15 UNKNOWN: I know, they didn't.

16 THE COURT: All right, we're -- let's get  
17 (indiscernible)

18 MR. SHEIK: Okay, I think we're -- okay, sounds  
19 good.

20 THE COURT: Mr. Sheik, why don't you go ahead.

21 BY MR. SHEIK:

22 Q Sure, I'll repeat the question. So, Mr. Campagna, was  
23 -- I believe that A&M has been providing us with the monthly  
24 report of the -- month-end reports of all assets that were  
25 either in CNL or, you know, that basically give us a full

1 understanding of the contents of the illiquid crypto that  
2 was in CNL. Is that correct?

3 A I don't think that's correct.

4 Q Where did I go wrong?

5 A I think the debtors provide you with --

6 MS. BRIER: Objection.

7 BY MR. SHEIK:

8 A -- financial information. I don't know that A&M is  
9 providing any reports to the public.

10 Q I'm sorry, I couldn't quite hear you. It was a bit  
11 muffled.

12 A I don't think that A&M is providing those reports. The  
13 debtors may be providing reports. If you want to show me  
14 one, I'm happy to look.

15 Q I see, and forgive me for misspeaking and you're right;  
16 it is the debtors that are providing those reports. But did  
17 your team or staff have any, you know, play in creating  
18 those reports?

19 A I think we assisted with getting them in the proper  
20 format, but the company obviously has a CFO and a controller  
21 and a whole finance chain that's responsible for the data in  
22 those reports.

23 Q Okay. And so, was A&M responsible for verifying any of  
24 the numbers in those reports at all, or no?

25 A No.



1 Q Okay. Now -- and this is just an opinion-based  
2 question. What is your opinion on why this case has taken a  
3 direction that would result in a much smaller recovery to  
4 creditors, given that the \$3.2 billion petition date priced  
5 illiquid assets that currently, you know, were in CNL as of,  
6 you know, March 2023? And based on what you see, is the  
7 going forward plan for recovery for creditors?

8 MS. BRIER: Objection.

9 THE COURT: Mr. Sheik, one of the problems is your  
10 question was loaded with a lot of assumptions that are not  
11 in evidence. If you want to -- if you believe it is and you  
12 want to point to the documents, I'll certainly permit you to  
13 do it.

14 MR. SHEIK: Sure.

15 THE COURT: I'm sustaining the --

16 MR. SHEIK: I -- and forgive me, Judge, I don't  
17 have that exact docket number. That's my mistake. Lesson  
18 learned. Okay, then I'll conclude, you know, with my final  
19 question.

20 BY MR. SHEIK:

21 Q So, Mr. Campagna, do you have any comments or any  
22 remarks to share on what your opinion on this recovery is  
23 for creditors? Do you believe that, you know, based on your  
24 estimate of, you know, the reality of the numerations, is  
25 that fair according to you or not?

1 A I think the recoveries are as they were laid out in the  
2 demonstrative that was shared earlier in this -- in this  
3 testimony. 67-cent recovery for NewCo, and 47.4 percent  
4 under a liquidation scenario.

5 Q And I missed that last part. I'm sorry. You're a bit  
6 far away --

7 A 47.4 --

8 Q Sorry, go ahead.

9 A 47.4 percent recovery under a liquidation, Chapter 7  
10 liquidation.

11 Q I see. Okay. Do you think that there's any potential  
12 for a full recovery or no?

13 MS. BRIER: Objection.

14 THE COURT: Do you have an answer to the question?

15 THE WITNESS: No, I don't.

16 MR. SHEIK: Thank you, Mr. Campagna. Your Honor,  
17 I appreciate you giving me the time. Thank you.

18 THE COURT: Okay, Mr. Sheik. Mr. Bronge.

19 MR. BRONGE: Yes, good afternoon. Can you hear  
20 me?

21 THE COURT: Yes.

22 THE WITNESS: Yes.

23 BY MR. BRONGE:

24 Q Yes, good afternoon, Mr. Campagna. I would like to  
25 start with looking at your declaration, which I understand

1 is the Debtor Item 46, Docket No. 3582 and Page 4 of 27, and  
2 that would be Item 11 there.

3 A What page are you on?

4 Q 4 of 27 --

5 MR. BRONGE: Page 4 --

6 THE COURT: Paragraph 11, which is at the bottom  
7 of Page 4, carries over to Page 5.

8 THE WITNESS: Okay.

9 MR. BRONGE: Okay --

10 THE COURT: Just give him a chance to read it, Mr.  
11 Bronge, and then you can ask your question, okay?

12 MR. BRONGE: Okay.

13 THE WITNESS: Okay, I'm familiar with the  
14 paragraph.

15 BY MR. BRONGE:

16 Q Okay. So, in the beginning here, you say: "I believe  
17 that valid business, legal and factual reasons justify a  
18 separate classification." Now, in relation to the status of  
19 collateral, what legal basis did your belief -- what did you  
20 base those beliefs on?

21 MS. BRIER: Objection.

22 THE COURT: Sustained. I -- I'm not sure what  
23 you're asking, Mr. Bronge. Why don't you try again and  
24 clarify.

25 MR. BRONGE: Yeah, okay. So, (indiscernible) the

1 belief that there are valid legal reasons for these  
2 classifications, and I would like to know what he bases that  
3 belief on. What legal, factual things did he base his  
4 beliefs on?

5 THE COURT: It's the first part of --

6 MR. BRONGE: The first -- yeah. Yes, exactly.

7 THE COURT: (indiscernible) base your belief.

8 THE WITNESS: Right. I was guided by legal counsel of the  
9 debtors on some of these points when it comes down to legal  
10 rights, but the classification scheme treated different  
11 creditors -- put different creditors into different classes  
12 based on whether they were customer claims and what specific  
13 type of customer claims; whether they were general unsecured  
14 creditors, trade creditors institutional debtholders and the  
15 like. So that's how the classification scheme was done.

16 Q Yes. So I understand you yourself have been advised by  
17 your legal advisor what (indiscernible) for instance the  
18 collateral will have. Therefore, you believe that is  
19 correct. Am I correct in that?

20 A Yes.

21 Q So you have not made your own analysis of that?

22 A Say that again, please?

23 Q You have not made your own analysis of that -- the  
24 legal status of the different accounts or collateral.

25 A I didn't form a legal view, but I on my own can

1 understand that a general unsecured creditor of a trade  
2 claim has different rights than a depositor on the Celsius  
3 platform. So maybe it's a small-l legal analysis on my  
4 part, but I was guided by legal counsel on the finer points.  
5 Q Okay. So let me (indiscernible) it's the legal counsel  
6 that has that opinion. Now let me then move to a different  
7 document. I would like to use Debtor Exhibit 69, which I  
8 think that's from yesterday as Docket Number 3293.

9 MS. BRIER: Mr. young, can you please pull up  
10 Debtor's Exhibit 69?

11 THE COURT: Hold on, Mr. Bronge. We're getting  
12 that.

13 MS. BRIER: And can we please make Mr. Young a co-  
14 host on the Zoom? Thank you.

15 MR. BRONGE: Your Honor, may I ask you a  
16 procedural question in the meantime?

17 THE COURT: Sure. Go ahead.

18 MR. BRONGE: In order for these documents to  
19 become into evidence, should I ask for that, or are they  
20 already there?

21 THE COURT: I'm trying to look through my notes.  
22 Does anybody know? Is Exhibit 69 in evidence?

23 MS. BRIER: Bob's declaration is in. I think a  
24 portion is --

25 THE COURT: I'm sorry, I didn't --

1 MS. BRIER: 69 is in evidence as of yesterday.

2 THE COURT: All right. It's in evidence, so you  
3 can go ahead and ask questions about it.

4 MR. BRONGE: Thank you. Do we have that  
5 available?

6 THE COURT: It's not up on the screen yet.  
7 Deanna, can you give them permission to share the screen?

8 CLERK: Yes. Is that Jeremy Young?

9 THE COURT: Yes.

10 MR. BRONGE: So before we start that, in the  
11 meantime I can ask him on the classification --

12 THE COURT: Hold on. It will be on the screen in  
13 just a moment.

14 CLERK: He has permission. He can share.

15 MR. BRONGE: Okay. We can stay with the previous  
16 document just for one more question.

17 BY MR. BRONGE:

18 Q In your liquidation analysis, you have used the same  
19 classification as you did -- as you stated in this paragraph  
20 we just read. Is that correct?

21 A That's correct.

22 Q Now then I draw your attention to item -- sorry, Page  
23 18, Item 25 in this document that we just have up. And this  
24 document is an agreement between Celsius and different  
25 governmental entities (indiscernible) some kind of

1 settlement. Can you read that paragraph, please?

2 A Yes, I'm reading it. Do you want me to read it out  
3 loud?

4 THE COURT: I just want to be sure that we're all  
5 on the same place. So...

6 MR. BRONGE: Yes. It's Item -- I can read it on--

7 THE COURT: Exhibit 69, Paragraph 25, which reads,  
8 "Congress used a broad definition of security in the  
9 Securities Act and Exchange Act. Security encompasses a  
10 wide range of investments." Is that the paragraph you are  
11 referring to?

12 MR. BRONGE: Yes, correct.

13 THE COURT: Okay. All right. It's up on the  
14 screen, and the witness can see that as well. Go ahead with  
15 your questions.

16 BY MR. BRONGE:

17 Q Okay. So I would like to understand if you have done  
18 an analysis on the liquidation considering the Earn interest  
19 program as a security.

20 A No, I have not.

21 Q Would you agree that if that is done, they would  
22 subordinate the (indiscernible) program?

23 MS. BRIER: Objection.

24 THE COURT: Calls for a legal conclusion.

25 Objection sustained.

1 BY MR. BRONGE:

2 A Would you agree to this paragraph stating that Earn  
3 interest is a security?

4 MS. BRIER: Objection, calls for a legal  
5 conclusion.

6 THE COURT: Sustained.

7 BY MR. BRONGE:

8 Q Okay. So if I read this paragraph, I can see that it  
9 says Celsius offered and sold CEL and the Earn interest  
10 program as securities. Is that a correct sentence I just  
11 read?

12 A That's what it says on the page in front of me.

13 Q So if that would be true, would the liquidation  
14 analysis make a difference for me as a borrower recovery?

15 MS. BRIER: Objection. Calls for a legal  
16 conclusion.

17 THE COURT: Overruled.

18 BY MR. BRONGE:

19 Q So can we answer?

20 A Can you restate the question, please?

21 Q Yes. So if that last sentence is true, would the  
22 recovery for the borrower in a liquidation be different?

23 A Yes. In a liquidation, it would be different.

24 Q Yes. So the borrower would receive a better recovery.

25 A Very small. Very nominal in a liquidation, yes.



1 Q Okay. That is actually all I needed to know. So me  
2 being a borrower would then receive a better recover in a  
3 liquidation.

4 A In liquidation compared to itself, yes.

5 Q Compared to CEL and Earn. That's correct, yes.

6 A Yeah.

7 Q And compared to --

8 THE COURT: I'm going to stop -- hold on. Hold on  
9 for a second, Mr. Bronge. I am serious about this. If  
10 everybody -- anybody in this room still has their phone on  
11 and it goes off, you're going to be out of the hearing for  
12 the rest of the hearing today. All right? Everybody was  
13 warned this morning repeatedly. And I've tried to make  
14 light of the fact that several phones went off this  
15 afternoon. But that's the end of it. If somebody else's  
16 phone goes off, you're out of here.

17 Go ahead, Mr. Bronge.

18 MR. BRONGE: Okay. Thank you. I don't have any  
19 further questions.

20 MR. SABIN: Your Honor, the first questions were  
21 hypotheticals I raised -- and this is Jeff Sabin for the  
22 record for Ignat Tuganov. He's getting into an area where I  
23 believe he's running counter to an order you've entered  
24 approving the class proof of claim which otherwise contains  
25 a provision that otherwise says there is no 510(b)

1 subordination of Earn.

2 THE COURT: I'm going to let him ask his questions  
3 and...

4 MS. SABIN: I just wanted to make sure. Thank  
5 you.

6 THE COURT: You can make your arguments. Go  
7 ahead, Mr. Bronge. Go ahead.

8 MR. BRONGE: Yes. In this -- in this case, I will  
9 say I've opted out of those settlements. And so I'm  
10 pursuing this. And I'm just following what the documents  
11 say and I just --

12 THE COURT: Just ask your questions, Mr. Bronge.  
13 Go ahead.

14 MR. BRONGE: Yeah. This is the question I asked,  
15 and I got the answer. So I'm satisfied. I'm finished.

16 THE COURT: Okay. All right.

17 MR. BRONGE: Thank you.

18 THE COURT: Thank you, Mr. Bronge. Mr. Phillips,  
19 you are next.

20 MR. PHILLIPS: Thank you, Your Honor.

21 BY MR. PHILLIPS:

22 Q Mr. Campagna, how are you doing today?

23 A I'm doing well, thank you.

24 Q All right.

25 MR. PHILLIPS: I'm going to need some assistance

1 in the courtroom with -- I believe it was Debtor's Exhibit  
2 47, which had the consolidated liquidation waterfall. And  
3 then also my amended set of exhibits that I submitted on the  
4 docket. I wanted to (indiscernible) a couple of things.

5 MS. BRIER: Can you please let us know the docket  
6 IDs that you're referring to?

7 MR. PHILLIPS: The Docket ID of what I submitted?  
8 Hang on.

9 MS. BRIER: No, sorry. The documents you want us  
10 to have available for the witness right now.

11 MR. PHILLIPS: One is the -- I mean, his original  
12 declaration, 3482. You have what I got from Mr.  
13 (indiscernible), Exhibit 47, includes the consolidated  
14 liquidation waterfall, which I believe you've used in your  
15 examination earlier.

16 MS. BRIER: I don't know that that is in evidence,  
17 but we will get it pulled up while I get your exhibits to  
18 the witness. And your exhibits are filed at Docket 3676, is  
19 that correct?

20 MR. PHILLIPS: I would have to double-check on  
21 that honestly. But in particular it's the first one I was  
22 going to ask about, the (indiscernible).

23 MS. BRIER: All right. Okay. I just want to be  
24 sure that the witness has in front of him what you want him  
25 to have in front of him. So we'll give him what we have,

1 and you can -- we'll find more if we need it.

2 MR. PHILLIPS: Fair enough.

3 THE COURT: All right. Go ahead, Mr. Phillips.

4 MR. PHILLIPS: Okay.

5 BY MR. PHILLIPS:

6 Q In Paragraph 56 of your original declaration, Docket  
7 3582, you refer to newco being (indiscernible) at  
8 (indiscernible) billion dollars of value, correct?

9 A Correct.

10 Q And in (indiscernible) and Alvarez and Marsal's  
11 opinion, is that a (indiscernible) value?

12 A That's what the valuation estimates provided by the  
13 other experts would indicate.

14 Q And which expert in particular provided that?

15 A The billion 248 is made up of the mining valuation from  
16 Centerview. The illiquid asset valuation originally  
17 provided by Stout, and then \$450 million of seed capital, of  
18 liquid crypto with a \$15 million deduction, which is a  
19 nuance in the valuation. And that sums to \$1.2 billion,  
20 which -- \$1.248 billion, which I believe is the number  
21 you're citing.

22 Q And so if I could go to the mining forecast from my --  
23 the exhibits.

24 A Which page?

25 THE COURT: Which portion of your exhibit, Mr.

1       Phillips?

2               MR. PHILLIPS:   It's...

3               THE WITNESS:   I have a ten-page exhibit.

4               MR. PHILLIPS:   Yeah, hang on.   It's the first one,  
5       (indiscernible) Exhibit E of disclosure statement.

6               THE COURT:    Okay.

7               THE WITNESS:   Okay.

8       BY MR. PHILLIPS:

9       Q       Do you recognize this?

10      A       Generally recognize this,   yes.

11      Q       Do you have any opinion as to the reasonableness of  
12      this forecast?

13      A       I don't.   This was the opinion of Centerview and Ryan  
14      Kielty, who testified to this yesterday.

15      Q       Okay.   And so when you used the number in the  
16      consolidated liquidation waterfall in Exhibit 47 of 565,  
17      that was totally reliant on Centerview and you just accepted  
18      their number.

19      A       Without following through to that exhibit you just  
20      referenced, the 565 was their number and I did rely on it.

21      Q       Okay.

22      A       I was going to say if you want to direct me to that  
23      exhibit again.   You mentioned an exhibit that I didn't  
24      follow, but...

25      Q       That was the Exhibit 47, Consolidated Liquidation

1 Waterfall. Debtor's Exhibit 47, Consolidated Liquidation  
2 Waterfall. Page 7 of exhibit -- in the draft that I have,  
3 it's Page 7 of the (indiscernible).

4 A Okay. I don't have that document in front of me.

5 MS. BRIER: Mr. Phillips, did you notice that  
6 document as one you plan to use?

7 MR. PHILLIPS: I did not. I thought that I could  
8 (indiscernible).

9 THE COURT: Celsius Exhibit 7, which is in --

10 MS. BRIER: I think he's saying 47.

11 THE COURT: Just a second. Celsius Exhibit 7,  
12 which is in the witness book at Page 7 as Consolidated  
13 Debtor Liquidation Waterfall. Is that what you're referring  
14 to, Mr. Phillips?

15 MR. PHILLIPS: Hang on a second. No. Actually,  
16 yes. I apologize. Yes. I have it under a different  
17 exhibit number, which was 47. (indiscernible) 259 of 332.

18 THE COURT: It's part of Exhibit 7 at Page 7 is  
19 Consolidated Debtor Liquidation Waterfall. It comes from  
20 Page 269 of 332, ECFE document number 2902. That's what  
21 you're referring to, Mr. Phillips?

22 MR. PHILLIPS: Yes.

23 THE COURT: Okay. All right. Everybody's got it  
24 in front of them. Go ahead.

25 BY MR. PHILLIPS:

1 Q All right. So the 565 you relied on Centerview for,  
2 correct?

3 A That's correct.

4 Q And you have no opinion as to the reasonableness of it  
5 or not?

6 A Wasn't a subject of my analysis.

7 Q Okay. And then when you did the liquidation, you  
8 estimated recovery at 16 percent, correct, as the midpoint.

9 A I think it's math that was backed into. We actually  
10 calculated the 88 million to the right and calculated what  
11 that recovery estimate would be.

12 Q Which was essentially -- correct me if I'm wrong, but  
13 that was essentially determined as a fire sale of the mining  
14 rigs themselves. Is that correct?

15 A It was a sale process of the rigs under Chapter 7  
16 liquidation run by a trustee. I don't know that I would use  
17 the word fire sale, but it was a sale over a condensed  
18 timeframe.

19 Q But do not envision the sale by a trustee of, for  
20 example, a site as a whole site, just like Celsius purchased  
21 --

22 A That's correct. That's correct. Sorry for  
23 interrupting you.

24 Q If the liquidation was performed as the sale of a site-  
25 by-site liquidation, for example, would you expect that the

1 value would be higher than your predicted value here?

2 A It could be.

3 Q You'd have an estimate by how much?

4 A I would rely on something else that Mr. Kielty  
5 mentioned yesterday. The company had received one bid for  
6 mining in total. That would have provided \$175 million of  
7 value to the estate. That bid was a mix of cash and notes  
8 to the company and required the potential buyer to raise  
9 \$275 million of cash on their own before they could execute  
10 the deal. And it was indicated that that seemed highly  
11 unlikely and the debtors didn't really consider it. That  
12 would be a going concern -- that would be a sale of the  
13 entire business, you know, would have been.

14 Q And I believe the timing of that bid was in December of  
15 2022 if I'm correct.

16 A That timing sounds about right.

17 Q And would you agree that conditions now are different  
18 than in December of 2022, which was about a month after FTX  
19 failed?

20 A They are different every day it seems, yes.

21 Q Would you agree that conditions and valuations of  
22 mining companies overall are higher today than they were in  
23 December of 2022?

24 A I don't know that to be the case.

25 Q So if you used -- is it reasonable to have used a



1 different valuation method for the recovery -- the estimated  
2 liquidation value if you would have done either a site-by-  
3 site or sale of the mining company as a whole?

4 A I think the approach we took was reasonable.

5 Q Are there other reasonable approaches that would have  
6 led to a higher value?

7 A There are other approaches and, you know, others could  
8 have landed at other conclusions. And those conclusions  
9 could be higher.

10 Q Thank you. Going next to my amended exhibits -- the  
11 next one, Disclosure statement, Weighted Distribution, and  
12 Election Example. Have you seen this before?

13 THE COURT: I'm sorry, which page were you at, Mr.  
14 Phillips?

15 MR. PHILLIPS: The next page of my amended  
16 exhibits.

17 THE COURT: What is it headed?

18 MR. PHILLIPS: Disclosure Statement, Weighted  
19 Distribution, Election Example.

20 THE COURT: Okay. Page 5 of 10 from ECF 3698.

21 MR. PHILLIPS: I'm sorry, I don't have that  
22 docket. I have it as Page 54 of the disclosure statement  
23 here.

24 THE COURT: I have your document in front of me.  
25 At the top of that page, it has Docket 3698. And it's Page

1 5 of 10. Below that is the heading Disclosure statement,  
2 Weighted Distribution, Election Example.

3 MR. PHILLIPS: That sounds correct, Your Honor.

4 THE COURT: Go on with the questions.

5 BY MR. PHILLIPS:

6 Q Have you seen this before?

7 A I am not familiar with where this is located, but -- so  
8 I'm not intimately familiar with the schedule.

9 Q Okay. And so are you knowledgeable of the whole  
10 disclosure statement or only certain parts?

11 A Disclosure statement is a big document. I'm generally  
12 knowledgeable of many parts, but this chart is not standing  
13 out.

14 Q So you and/or Alvarez & Marsal did not prepare this  
15 chart at all?

16 A It's possible we prepared it. I don't know who  
17 prepared this chart.

18 Q That's the question I'm trying to get answered. But  
19 you have no knowledge of --

20 THE COURT: All you can do is ask questions and  
21 the witness can answer them. So let's ask another question.

22 MR. PHILLIPS: Fair enough. And I'm finished with  
23 my cross-examination, Your Honor. Thank you so much, Mr.  
24 Campagna.

25 THE WITNESS: Thank you.

1 THE COURT: Thank you very much, Mr. Phillips.

2 Ms. Dow?

3 MS. DOW: Yes. Good afternoon. In regards to  
4 exhibits, would you please go back to the best interest test  
5 exhibits that was shared earlier I guess this morning your  
6 time.

7 MS. BRIER: That would be Exhibit 70. And, Mr.  
8 Young, if you could pull that up on the screen. Mr.  
9 Campagna, that's also in your binder as the last tab and the  
10 second-to-last tab, too.

11 MS. DOW: Thank you for assisting with that.

12 BY MS. DOW:

13 A I'm sorry, what document did you ask for? You asked  
14 for the best interest test? What's pulled up now is --

15 Q The best interest test. It was the chart with the  
16 three columns comparing the different disposition scenarios.

17 A The demonstrative from this morning.

18 MS. BRIER: The demonstrative from this morning.  
19 Mr. Young, that's at Page 5 on the document that you are  
20 displaying. Thank you.

21 THE COURT: All right. Just so that the record is  
22 clear, what we have up on the screen is docket number 3697.

23 MS. DOW: Yes, Mr. Campagna, you are correct.

24 THE COURT: Page 5 of 6. CEL Token Liquidation  
25 Break-Even Values. I just want to make sure we have a clear

1 -- that's now what we're looking at?

2 MS. DOW: No, Your Honor, sir.

3 MS. BRIER: They show the same thing. 3653 and  
4 3697 both have this chart. And we'll put up 3697, which is  
5 the exact one we showed this morning. And it's Page 5 of 6  
6 of 3697.

7 THE COURT: THE COURT: All right. So what I have  
8 open in front of me is ECF 3653, Page 5 of 6, Exhibit A is  
9 the chart -- it shows a chart -- that's what we're looking  
10 at?

11 MS. DOW: Correct. It's not what's currently on  
12 screen.

13 THE COURT: Go ahead.

14 THE WITNESS: It's 6 of 6 from the stack she's  
15 looking for I believe, not 5 of 6.

16 THE COURT: We're not at the same place then.

17 MS. DOW: There we go. Okay, yes. The plan and  
18 the liquidation recovery waterfall. Thank you.

19 THE COURT: Just stop for a second because I want  
20 to make sure we have a clear record on what we're looking  
21 at. I believe what we're looking at is Page 6 of 6 of ECF  
22 Docket Number 3697, Plan and Liquidation Recovery Waterfall.  
23 I believe that's the chart that's on the screen now.

24 MS. BRIER: Thank you, Your Honor.

25 THE COURT: Go ahead, Ms. Dow.

1 MS. DOW: Yes, thank you.

2 BY MS. DOW:

3 Q Thank you. Mr. -- good afternoon, Mr. Campagna. Am I  
4 saying the name incorrectly?

5 A Campagna. It's close enough.

6 Q I apologize --

7 A No problem. No problem.

8 Q -- for the pronunciation. So I believe you perhaps had  
9 mentioned before that you and your organization did not  
10 originate all of the numbers in this comparison, is that  
11 correct?

12 A That's correct.

13 Q Okay. And so for the purpose of a liquidation recovery  
14 waterfall or a best interest test, what is the typical  
15 accredited procedure requirements for vetting the numbers in  
16 the analysis?

17 A Specifically for the liquidation analysis?

18 Q I'm sorry, I didn't hear the first word you said.

19 A Specifically for the liquidation analysis is the basis  
20 for your question?

21 Q For any of the comparatives, the liquidation, the  
22 orderly winddown, or the newco.

23 A We rely heavily on the company's books and records and  
24 market analysis in this case, the cryptocurrency. And most  
25 of the illiquid assets were valued by a third-party

1 valuation firm. Again, the mining value, at least in the  
2 newco column, was valued by a reputable investment bank.  
3 Those are the biggest -- that represents the biggest numbers  
4 on the page here. And some of the other numbers come from a  
5 variety of financial analysis, the plan and the like. So a  
6 lot of this was based on third-party valuation of assets and  
7 the valuation of the mining business by an investment bank.

8 Q And then what level are you required to vet those  
9 numbers and verify?

10 A I don't think there's any requirement. But again,  
11 they're third-party, reputable firms that were in the  
12 courtroom yesterday available for questioning. And, you  
13 know, their reports were submitted.

14 Q Sure. And what accreditation standard is this work  
15 product produced under?

16 A Say that again, please.

17 Q What accreditation standard is the work product  
18 produced under?

19 A I'm not aware of an accreditation standard.

20 Q Okay. So in valuation of the liquidation or any parts  
21 of this, you're saying there has not been an accreditation  
22 standard applied?

23 A I'm not aware of an accreditation standard for  
24 performing a liquidation analysis. But as far as  
25 accreditation standards applicable to doing business

1 valuations and doing asset valuations, you'd have to speak  
2 to those firms. I don't do either.

3 Q Okay. All right. So -- okay. So when comparing a  
4 liquidation or comparing assets to generate a comparative  
5 recovery, in looking at -- and then doing the best interest  
6 chart, what -- do you feel that in your professional  
7 opinion, do the projections hold a healthy degree of  
8 conservatism?

9 MS. BRIER: Objection.

10 THE COURT: Sustained.

11 BY MS. DOW:

12 Q Okay. I'm going to switch gears here. Perhaps you  
13 could share with us what experience and how many bitcoin  
14 mining business models you have produced or those that put  
15 input into this recovery waterfall has produced.

16 MS. BRIER: Objection.

17 THE COURT: Overruled.

18 BY MS. DOW:

19 A I personally have not worked on another crypto or  
20 bitcoin mining company. I can't speak to the firms of Stout  
21 or Centerview, who prepared the valuation components I think  
22 you're referring to.

23 Q Okay. All right. Can you speak to what the drivers to  
24 determine the mining, in particular -- in the liquidation  
25 valuation, is there any operating period or immediate

1 liquidation?

2 A In this analysis, the \$88 million is reflective of a  
3 sale of the assets on a non-operating basis.

4 Q Okay. So immediately after effective date?

5 A Right.

6 Q Okay. All right.

7 A The plan fails after trying newco and then trying to  
8 come out with a public mining vehicle with a smaller goal  
9 than the newco. And if we fail on both of those, then yes,  
10 it was presumed that this goes to an asset sale type  
11 liquidation.

12 Q You said a smaller -- I didn't hear one -- it's a  
13 smaller what?

14 A A smaller footprint. NewCo is doing more than bitcoin  
15 mining. They're doing staking and other services. So NewCo  
16 has a bigger mandate than what you see here in the middle  
17 column with a public mining company being stood up. We're  
18 still trying to harvest the value of the public miner and  
19 get that in folks' hands, get the equity security in folks'  
20 hands. And you're winding down the rest of the operation.  
21 If we can't do NewCo and we can't do a standalone public  
22 mining entity, there's not a lot of steps left. So in this  
23 analysis, it's shown as an asset sale type of liquidation.

24 Q Okay. Through the course of the analysis, what  
25 criteria did you have line of sight to on how the drivers



1 were set for the different disposition analyses, the  
2 liquidation (indiscernible) the NewCo?

3 A I'm not sure I follow the question.

4 Q So what criteria was set, for example, if the primary  
5 business model of the liquidation is for immediate asset  
6 sale on the individual unit or site? What line of sight do  
7 you have as compared to the valuation criteria, drivers to  
8 the public? Public miner and orderly winddown versus the  
9 NewCo.

10 A I'm not sure I can directly answer the question, but  
11 again, the NewCo valuation was done by a third party firm.  
12 We took a 25 percent discount off of that for a variety of  
13 reasons in orderly winddown, public miner column. And then  
14 in the asset liquidation, we spoke with the company's mining  
15 team who have purchased these rigs new. They've seen the  
16 marketplace for what they're valued at now. And we did a  
17 buildup on a rig-type by rig-type basis that sort of arrived  
18 at the \$88 million along with sale of the physical  
19 facilities that they own. And the data point to back that  
20 up, that was about an average price of \$640 per rig as a  
21 component of the \$88 million. And based on some sale  
22 transactions that were presented to the debtors earlier in  
23 the case, the range for rigs was about \$350 to \$550 I  
24 believe was what you heard yesterday from testimony. So it  
25 felt like we were in the right zip code. And again, I could

1 also benchmark it with the one offer that would have  
2 resulted in \$175 million of value for all the mining  
3 business, which also had a lot of things the buyer needed to  
4 do before they could actually follow through that in the  
5 opinion of our investment bankers was not likely to happen  
6 and wasn't deemed to even be a valid bid.

7 So that would say 175 at the top end if you're lucky  
8 enough to really close that bid along the lines of what we  
9 saw before. And we have an \$88 million on an asset-by-asset  
10 basis.

11 Q Okay.

12 THE COURT: Let me ask you -- hold on, Ms. Dow.  
13 I'll let you ask additional questions. But I just want to  
14 make sure I understand something. So (indiscernible) this  
15 was a demonstrative. Just in the NewCo column first, were  
16 any of those numbers derived by A&M or were those inputs all  
17 from other valuations or other analyses by other experts?

18 THE WITNESS: So if you look at that NewCo column,  
19 the numbers that came from third-party firms. A big chunk  
20 of the liquid cryptocurrency, so the \$2.6 billion right on  
21 the top, we had Stout look at that. Again, a big piece of  
22 that is Ethereum and bitcoin. Very easy to value. So I  
23 don't want to overstate the level of valuation work that's  
24 required there.

25 But then there are some alt coins in there that

1 required some more substantive valuation by Stout. The  
2 mining 565 came from our investment banker. And Ryan Kielty  
3 was here yesterday to speak to that number. And then the  
4 illiquid assets, the vast majority if not all of that 283,  
5 and the same in the other columns, came from a Stout  
6 valuation. So the vast majority of this came from third-  
7 party valuations.

8 THE COURT: And what about the adjustments, the  
9 downward -- the deductions. Where did they come from?

10 THE WITNESS: The distributions to claims? That -  
11 -

12 THE COURT: You know, less post-emergence costs to  
13 estate, litigation trust funding...

14 THE WITNESS: Perfect. Yes.

15 THE COURT: See capital. Just walk me through.  
16 I'm just trying to understand where the numbers in this  
17 demonstrative came from.

18 THE WITNESS: Sure.

19 THE COURT: With the work of Alvarez & Marsal,  
20 which were essentially inputs that were given to you.

21 THE WITNESS: Sure. So the liquid cryptocurrency  
22 is based on the coin-by-coin analysis that the company  
23 supplied to Stout and Stout then valued. The post-emergence  
24 cost to the estate, these were estimates that we at Alvarez  
25 & Marsal helped the company put together. So we definitely

1 were driving these costs. And under the NewCo scenario,  
2 what you're really looking at is six to 12 months of  
3 operating expenses to get the distribution out. We hope to  
4 do it in six months. We budgeted for a little longer. So  
5 six to 12 months of real work to get the distribution out  
6 and you can get to the distribution perhaps around 14 months  
7 out for unclaimed -- people don't show up for the recovery  
8 and it redistributes. So that's sort of the operating cost  
9 behind that. And then some fees to wind down these entities  
10 over a couple of years.

11 In the orderly winddown public miner, the  
12 presumption there is a five-year winddown plan where the  
13 plan administrator tries to harvest the most value for the  
14 illiquid assets, the litigation, and the like. But it's a  
15 longer-term plan with some more dollars behind it.

16 THE COURT: Are those A&M numbers or are those the  
17 numbers that were given to you?

18 THE WITNESS: About half of that is an A&M number.  
19 Maybe \$100 million of that is an A&M number. \$60 million  
20 was reflected in the bid from the backup bidder for their  
21 fees associated with that transaction. And then finally the  
22 liquidation, again, is a number A&M helped derive. It's  
23 about fifty-fifty. About 80 million is --

24 THE COURT: That's the \$159 million?

25 THE WITNESS: Yes. It's about \$80 million of

1 operating costs to take care of the liquidation on an  
2 expedited basis, and then \$80 million, three percent fee to  
3 a Chapter 7 trustee.

4 THE COURT: Without going through the explanation  
5 at this point, are there other numbers in this demonstrative  
6 that are inputs from A&M as opposed to information you got  
7 from others?

8 THE WITNESS: Well, the next two lines are  
9 specifically in the plan. Litigation trust funding of \$50  
10 million, seed capital to NewCo of 50. Under the current  
11 proposal with Fahrenheit, we put a \$50 million because the  
12 mining business would need some capital.

13 Beyond that, the answer is no until you get to the  
14 claims where we did -- obviously we had been helping the  
15 company assess claims, but most of these numbers are books  
16 and records numbers as the claim process -- the claims  
17 reconciliation process continues.

18 THE COURT: Thanks very much. Okay. Go ahead,  
19 Ms. Dow, with your questions.

20 MS. DOW: Thank you, Your Honor.

21 BY MS. DOW:

22 Q Okay. So I believe what I heard is that this page has  
23 a mix of parties that have inputted to it and that your  
24 organization, A&M, are largely involved in the derivation of  
25 the second and third column. Did I hear that correctly?

1 A I think that's fair.

2 Q And so with some involvement with calculating and  
3 analyzing some of the deductions (indiscernible).

4 A Yes, that's right.

5 Q Okay. Thank you for that. So when you did work on the  
6 analysis of the mining operation, did (indiscernible) going  
7 concern business model or orderly winddown business model  
8 inputs (indiscernible)?

9 A You're talking about the underlying forecast that was  
10 supplied to Centerview to conduct their business valuation?

11 Q Yes. And whatever numbers you utilized as inputs to  
12 the orderly winddown.

13 A We just used the \$565 million valuation from Centerview  
14 and discounted it by 25 percent.

15 Q Okay.

16 A And that's (indiscernible).

17 Q And did you do any tests on the 565 beyond the --  
18 before doing mathematical adjustment?

19 A I think we've been through this. That was the expert  
20 opinion of Centerview in their valuation that was provided.  
21 So no, we didn't do anything beyond that.

22 Q So no verification of quality of revenues to verify the  
23 input data.

24 A Not done by me.

25 Q Okay. And again could you go through how you derived

1 the 25 percent discount to get us from the NewCo so the  
2 winddown? What is the math or procedure behind that?

3 A I believe I did.

4 Q Could you summarize that again? I'm sorry.

5 A Sure. We pointed to a couple of factors. One, in the  
6 NewCo the \$565 million presupposes that Fahrenheit and U.S.  
7 Bitcoin is running the operation. That was important -- an  
8 important component of the valuation was knowing who the  
9 operator was, and it was the Debtor and UCC's first choice  
10 operator. So inherently if you're going to your second  
11 choice operator, you probably think they're going to do a  
12 slightly -- not quite as good of a job. Could be a great  
13 second choice bidder, but likely not going to do quite as  
14 good or you'd rather go with your first choice. So that's a  
15 piece of it.

16 U.S. Bitcoin also put several -- U.S. Bitcoin and  
17 Fahrenheit also put several items very specifically into the  
18 terms of the deal that is inked and signed and ready to be -  
19 - ready to go. There was \$100 million of credits for future  
20 purchases of rigs. So \$100 million in discounts. There was  
21 a cap placed on buildout costs where they capped buildout  
22 costs at \$395,000 per megawatt. So if construction costs  
23 run higher than that, it's on them. That was deemed  
24 valuable. And they were also supplying software to all our  
25 rigs that will help regulate the power usage, when they turn

1 on, when they turn off, and keep them running efficiently.

2 So those three items, we can soft circle those.

3 I mentioned one very specifically with \$100 million.

4 Big numbers that also helped us guide to a 25 percent

5 discount. So that's largely how we assessed the 25 percent

6 from NewCo to orderly winddown/public miner.

7 Q Thank you for that. So could you -- two questions  
8 about inputs to the orderly winddown numbers. IN orderly  
9 winddown did you consider what would the capital infusion  
10 required in order to fully electrify and energize the idle  
11 assets and over what period of time?

12 A Yeah, I'm not the best person to speak to the  
13 underlying forecast for mining. I think that was the  
14 subject of Mr. Ferrara's discussion yesterday. But I do  
15 believe it had -- the 565 presumes \$50 million of capital to  
16 fund it upfront, which is why you see a deduction on the  
17 very next line. There's a little bit of semantics with the  
18 -- but it presupposes they have \$50 million in capital to  
19 start with. And it does include some rig replacement and  
20 other capital costs along the way. But again, Mr. Ferrara  
21 would be a better person to speak to on the details there.

22 Q Okay, thank you for that. So you don't have line of  
23 sight of what the additional capital to energize the site,  
24 just for some of the in-service costs?

25 A There were some costs that energized sites built in.



1 There was a projected buildout of certain items in the  
2 underlying business plan that, again, I'm not fully familiar  
3 with those details.

4 Q All right. So did you offer support to the mining  
5 valuation?

6 A No, we don't -- my firm doesn't do valuation work on  
7 that level.

8 Q Okay. On that level. You mean actively producing  
9 valuation analysis?

10 A I mean we have a division that does some valuation  
11 work, but we don't have experience in the crypto-mining  
12 space. And we're not asked to value -- provide any  
13 assistance with respect to valuation of the mining assets.

14 Q Okay, thank you. How about the backup bids for the  
15 orderly winddown? What kind of review or input did that  
16 have on the numbers there?

17 A I think what I've already stated is sort of the breadth  
18 of my knowledge on the backup bids. You know, moving from  
19 our first bidder to our second bidder was part of the reason  
20 for the decrease in the valuation that you see on the mining  
21 business. But again, our investment banker was collecting  
22 the backup bids as well as the primary bids and performed  
23 all the assessments on those bids.

24 Q So thank you for that. And so the orderly winddown is  
25 materially based on the work of others, yet you've done some

1 analysis and added to it, such as the discount. And you're  
2 discounting total value, or are you discounting the  
3 productivity of the assets to generate revenue?

4 MS. BRIER: Objection.

5 THE COURT: Overruled.

6 BY MS. DOW:

7 A 565 times 75 percent equals 424. I'm just discounting  
8 the number.

9 Q Okay. So in the event of the criteria supporting your  
10 underlying numbers, did you look at and verify your inputs  
11 that were given to you, if there perhaps might be any  
12 irregularities in the assumptions that are flawed versus,  
13 you know, industry standards?

14 A In applying a 25 percent discount to 565? I'm not sure  
15 I follow. I did not do the valuation of the 565, so I am  
16 not aware of the firm that did do that analysis used.

17 Q Okay. I apologize, I didn't mean to speak over you.

18 A That's okay.

19 Q Sorry about that. But if you are in fact using a  
20 discount through the revenue or overall valuation, shouldn't  
21 there be an understanding of the key assumptions --

22 THE COURT: He's explained what he's done. Just  
23 move along with the examination.

24 MS. DOW: Okay.

25 BY MS. DOW:

1 Q So if in fact irregularities are found in the  
2 underlying assumption, whether it's the assumptions driving  
3 the 25 percent discount or others, where does that put this  
4 analysis in the range of high degree of conservatism?

5 MS. BRIER: Objection.

6 THE COURT: Sustained. Let's move along.

7 MS. DOW: Okay. So, Your Honor, I'm trying to  
8 voice tactfully a question on the line of probing my concern  
9 area, which is around the assumptions of the productivity of  
10 the assets and creating their primary --

11 THE COURT: He's explained where the numbers have  
12 come from. You already asked about that.

13 MS. DOW: Thank you, Your Honor. What I'm trying  
14 to understand is how if there is a flaw, since this is a  
15 single number and not a range, which is often used, how that  
16 --

17 THE WITNESS: He has indicated which experts did  
18 valuations and what he relied on. Move on with your  
19 examination. If you had questions about the other  
20 valuations, you should have asked it of them. Let's go.

21 BY MS. DOW:

22 Q So on the orderly winddown piece that you valued, I  
23 heard you speak about I think it was the Bricks. What was  
24 the findings or your review and your use of that into rollup  
25 numbers here of the other two?

1 A I'm sorry, was that the Brick? Was that what you just  
2 said?

3 Q I think that's the colloquial name for the bid that you  
4 were mentioning just a few moments ago.

5 A Yes.

6 Q But there were other -- I believe two other bids.  
7 Could you please share how they impacted the calculations,  
8 the review of those impacting the calculations.

9 A I think I mentioned the backup bidder, which, yes, was  
10 the Brick Group. Their cost structure is built into the  
11 second line on this chart, the less post-emergence costs to  
12 the estate. So part of that 163 of expense relates to costs  
13 associated with that backup bid, which is our signed-up  
14 backup bidder.

15 As far as other backup bids, I did not look at any  
16 other backup bids. I am not aware of what they are or what  
17 the impact would be.

18 Q Okay. Thank you. And then finally for the use of this  
19 overall analysis, if -- how does a change in either three of  
20 these columns perhaps impact the best interest test?

21 MS. BRIER: Objection.

22 BY MS. DOW:

23 A Mathematically? More asset recoveries make the bottom  
24 number higher. The percents go up. As does less  
25 distributions to claims. I don't -- that's the way the math

1 would work. If NewCo goes up, you increase the gap that you  
2 need to hit to have an issue with the best interest test.

3 Q Could you repeat that again? I'm sorry, it was  
4 muffled.

5 A If you increase the values under the NewCo column, then  
6 the positive numbers, the value of these assets  
7 (indiscernible) everything else constant, you would increase  
8 the gap of room or the cushion you have before there's any  
9 issue with the best interest test.

10 Q And what about the other way, if for some reason the  
11 value of large operation is significantly less, like 20, 30,  
12 40 percent in practicality?

13 A Maybe not directly answering your question, but if you  
14 increase -- left everything else the same and increased the  
15 asset values on the liquidation, that would decrease the  
16 cushion between NewCo and liquidation value and decrease the  
17 cushion we currently have on the best interest test.

18 Q Okay.

19 THE COURT: Let's finish up, Ms. Dow.

20 BY MS. DOW:

21 A I don't recall the specifics on -- you know, there were  
22 some other points in that question, but I didn't really  
23 follow the specifics.

24 Q Okay. So the cushion would be decreased if the left  
25 two column's numbers were overstated currently and come out

1 lower or the cushion would also increase --

2 THE COURT: Ms. Dow, finish up. Now.

3 MS. DOW: (indiscernible), did I hear that  
4 (indiscernible)?

5 THE COURT: Ms. Dow, finish up now.

6 MS. DOW: Thank you. I was just asking for  
7 clarification on -- on the (indiscernible).

8 THE COURT: Ms. Dow, it's math. Go on. If you  
9 have any more questions, ask them now.

10 MS. DOW: Thank you, Your Honor.

11 THE COURT: All right. We'll take a recess until  
12 3:30.

13 (Recess)

14 THE COURT: All right, please be seated. Next up  
15 is Mr. Ubierna.

16 And you're still under oath.

17 Go ahead, Mr. Ubierna.

18 BY MR. UBIERNA:

19 Q Good afternoon, Mr. Campagna. Are you familiar with the  
20 EIP part of the plan?

21 A Yes, I generally am.

22 Q What role, if any, has Celsius employees or directors  
23 in drafting the EIP?

24 A I'm sorry, was that what role have the directors and  
25 officers had in the EIP?

1 Q In drafting the EIP, yes.

2 A I don't know that they drafted it, but they certainly  
3 reviewed it and approved it before it made its way into what  
4 was filed on the docket once upon a time into the plan.

5 Q Okay. Have you been involved in drafting the Emergency  
6 Incentive Plan (indiscernible) targets?

7 A Yes, I have.

8 Q How have you established the targets?

9 A Well, this is a very unusual situation. In a typical  
10 situation, typical business, you have revenue targets and  
11 EBITDA targets. It's a little bit easier to talk about what  
12 is target performance, what's exceeding performance and the  
13 like. Here, the path forward is to do a couple of things,  
14 but primarily to get liquid crypto returned to customers as  
15 quickly as possible. So we tried to drive targets around  
16 with those goals in mind and get the mining business as  
17 operational and get as many rigs profitably in action as  
18 quickly as possible to drive that business to approved  
19 cashflow performance as quickly as possible and set it up  
20 for success as part of -- well, now in this part of NewCo.  
21 And that's what the mining metrics were designed to do as  
22 well.

23 Q Ballots were sent in late August. And today it's  
24 October 4th. How -- would you consider easy getting a plan  
25 approved by October 31?

1 A I've never used the word easy. So that counts on  
2 things that are out of my control and out of our control.  
3 Maybe except for one person on the room's control. So  
4 that's really our hope. And it looks better maybe -- maybe  
5 it looks better now than it did a couple of months ago. I  
6 don't know.

7 Q What has happened recently with Celsius Mawson site?

8 A I'm sorry, say that again?

9 Q What has happened recently with Celsius Mawson site?

10 A I'm sorry...

11 MS. BRIER: Mawson. I think he's saying Mawson.

12 Yes.

13 THE WITNESS: Mawson. Okay.

14 BY MR. UBIERNA:

15 A Yes. I'm probably not the most up-to-speed on all the  
16 folks you could have asked that, but I know the Mawson rigs  
17 are offline or going offline. And we would look to redeploy  
18 them.

19 Q Okay. How does disclosure impact the EIP rewards?

20 A So if you look -- one of the performance metrics is  
21 rigs -- I forget the terminology. Rigs online, rigs hashing  
22 profitably. I know there was a threshold target. I don't  
23 know if I have the data point in my declaration. I'm just  
24 looking to see if I have that data point. There's a target  
25 performance and -- and threshold and a target. One was as



1 of August 31st, a company needs to have over 85,000 rigs  
2 online. I might have the number wrong. They did achieve  
3 that portion of the milestone. But the target for September  
4 30th was higher than where the online rigs ended couple days  
5 ago. So based on the math, the math isn't in their favor at  
6 this time for the second half of that opportunity.

7 Q Okay. How is it that four months target for the  
8 (indiscernible) is measured?

9 A That one has been met. It was a long time coming. We  
10 need certain easements from folks who are economically  
11 motivated to help. I think that performance target actually  
12 helped get that completed and get in excess of 10,000 rigs  
13 up and running.

14 Q Okay. The performance target says completed and  
15 operational. How is that measured?

16 A That was -- I'm (indiscernible) the specifics, but I  
17 believe it had to be energized, we had to have control of  
18 the facility and it had to be energized and ready to go.  
19 And it was all of those things.

20 Q Okay. Does it have any numerical target that  
21 (indiscernible) performance target (indiscernible) --

22 A That I don't --

23 Q -- completed and operational?

24 A Apologies for speaking over you. I don't  
25 (indiscernible) a numerical target. It was more those

1        qualitative factors that I just mentioned that needed to  
2        move forward. Get through the easement issue, get the --  
3        which then allowed us to energize the facility and get it  
4        operational.

5        Q        Okay. Going back to the 95,000 mining rigs. Will they  
6        needed to be vetted for the metric to be monthly or weekly  
7        average for it to be not so easily abused?

8        A        There's a whole bunch of different ways to set this up.  
9        And we had many weeks of negotiations with the Unsecured  
10       Creditors' Committee to set the targets where they are. And  
11       this is where we landed.

12       Q        Are the mining metrics difficult to meet in your  
13       opinion?

14       A        Well, one of them met, one is 50 percent met. And I  
15       think there's a third one that I'm -- again, as a memory  
16       test I'm not remembering it offhand. So I know they haven't  
17       met all of them. And it doesn't look like they will meet  
18       all of them. So they seem sufficient.

19       Q        Okay. Have this target been made more difficult  
20       because of previous failures by Celsius management?  
21       Yeah, I don't know how to answer that.

22       A        Okay. I don't have any more questions.

23                   MR. UBIERNA: Thank you, Your Honor.

24                   THE COURT: Thank you very much, Mr. Ubierna.

25                   Mr. Frishberg?

1 MR. FRISHBERG: Hi. Thank you, Your Honor. I  
2 just have a very brief question.

3 BY MR. FRISHBERG:

4 Q I believe you covered part of this earlier. Has there  
5 been any offers or have there been any offers to buy all the  
6 CEL tokens in the event of a liquidation?

7 A Not that I'm aware of. I haven't heard of any.

8 Q Okay. If Celsius was to go into, as some have  
9 suggested, a Chapter 7 liquidation, how would they sell the  
10 CEL tokens?

11 A I don't think they would. I think the SEC's regulatory  
12 bodies have prevented the company from selling the CEL  
13 tokens. So I do not think they would be sold.

14 Q So the CEL tokens for the company have no value.

15 A Correct.

16 Q Would that be accurate?

17 A Under a liquidation analysis, we have zero value  
18 reflected for them in the liquidation column.

19 Q Those are the questions.

20 THE COURT: Thank you very much, Mr. Frishberg.

21 Mr. Abreu?

22 BY MR. ABREU:

23 Q Hello, Mr. Campagna. Were you here when Mr. Galka was  
24 speaking?

25 A For part, yes. Not all of his testimony, no.

1 Q Okay. So could you -- I'm just going to mention -- I'm  
2 going just to use his expert report and your supplement  
3 statement, your supplement declaration. That's -- so let's  
4 open the document 3580, which is Mr. Galka's expert report.

5 A I have that in front of me.

6 Q Let's go to Page 28 of the PDF. On figure 8.

7 A Okay.

8 Q Where it says Celsius Annual (indiscernible)

9 Transactions. Do you recall --

10 THE COURT: What page are you on, Mr. Abreu?

11 MR. ABREU: Twenty-eight. It's that table of

12 Celsius Annual --

13 THE COURT: That's fine. I just needed to turn to  
14 it. Go ahead.

15 BY MR. ABREU:

16 Q Do you recall when Mr. Galka said it was fair to assess  
17 the average price of CEL purchase by buyers through the  
18 company by taking the -- for example, the 2021 dollar value  
19 and then dividing by the 2021 number of CEL tokens? Do you  
20 recall that?

21 MR. WEEDMAN: Objection, Your Honor.

22 MS. BRIER: Objection.

23 MR. WEEDMAN: I think that misstates Mr. Galka's -

24 -

25 THE COURT: Sustained. Ask your next question,

1 Mr. Abreu.

2 BY MR. ABREU:

3 Q Are you familiar with tax harvesting?

4 THE COURT: I couldn't hear you, Mr. Abreu. Just  
5 --

6 BY MR. ABREU:

7 Q Mr. Campagna, are you familiar with tax harvesting?

8 A No, I'm not.

9 Q Have you ever filed your taxes in a year that you have  
10 capital gains?

11 A Yes.

12 Q Have you ever held or traded cryptocurrencies?

13 A I have not.

14 MR. ABREU: Judge, could I just explain what tax  
15 harvesting is?

16 THE COURT: No. Just ask your questions.

17 MR. ABREU: Okay.

18 BY MR. ABREU:

19 Q Are you aware if cryptocurrencies are subject to  
20 capital gains in the U.S.?

21 THE COURT: I'm sorry, I couldn't hear your  
22 question.

23 BY MR. ABREU:

24 Q Are you aware if cryptocurrencies in U.S. are subject  
25 to capital gains?

1 THE COURT: Subject to capital gains.

2 BY MR. ABREU:

3 A I'm certainly no tax advisor, but I have heard that.

4 I'm not aware of them from anything other than generally  
5 being around the cases and hearing things.

6 Q In a case of (indiscernible) or CEL, which both for  
7 example at \$5 (indiscernible) the company, do you believe  
8 there might be a greater recovery if he gets (indiscernible)  
9 his asset that he bought?

10 THE COURT: I don't understand your question, Mr.  
11 Abreu.

12 MR. ABREU: My question is to the matter that if  
13 there is a distribution of CEL tokens, OTC buyers can choose  
14 to sell it in the market at any point and have a value that  
15 they can harvest against their capital gains, which is  
16 higher than what would be proposed -- what is said on the  
17 (indiscernible).

18 THE COURT: Your question is beyond the scope of  
19 the direct examination and I won't permit it. It's also  
20 beyond the expertise that he has been using in this case.

21 MR. ABREU: Okay.

22 BY MR. ABREU:

23 Q (indiscernible) that the proposed reorg plan already  
24 excludes parties who might violate securities laws and are  
25 subject to litigation in the case of CEL token.

1 MS. BRIER: Objection, Your Honor.

2 THE COURT: Sustained.

3 BY MR. ABREU:

4 Q Does the company intend to pursue any value creation  
5 for CEL token?

6 MS. BRIER: Objection.

7 THE COURT: Sustained.

8 BY MR. ABREU:

9 Q Are you aware if the current reorg plan has any  
10 (indiscernible) or CEL token besides liquidating or just  
11 settling on the proposed price?

12 MS. BRIER: Objection.

13 THE COURT: Could you ask your question again?  
14 I'm not sure I followed it.

15 BY MR. ABREU:

16 Q Are you aware if the current reorg plan has any use  
17 case for CEL token on the reorganization?

18 A As part of NewCo?

19 Q Yes.

20 A I'm not aware of any.

21 Q Do you understand that -- let me rephrase it. If there  
22 is -- if there is no plan for continuing any sort of value  
23 for CEL on reorg, if that will eliminate any issues with  
24 security concerns? Just if you are aware, if you have any  
25 understanding of this.

1 MS. BRIER: Objection.

2 THE COURT: You can answer the question.

3 BY MR. ABREU:

4 A No. I have no knowledge of that topic.

5 MR. ABREU: Just one question for you, Judge,  
6 about our proceeding. Just my final question. In the  
7 matter of Mr. Galka's witness statements, if you recall I  
8 ask him why he did not provide any data from FTX, which they  
9 subpoenaed. And I believe it's not sealed. Would you  
10 inclined to approve a motion to release that data? Because  
11 I believe there might be sufficient information that an  
12 expert witness could shed some doubts on what Mr. Galka has  
13 reported here today.

14 THE COURT: I don't have a motion in front of me,  
15 Mr. Abreu. If you make a motion, I'll decide the motion.

16 MR. ABREU: Thank you. That's all for me.

17 THE COURT: Thank you very much, Mr. Abreu.

18 All right, Mr. Johnson.

19 MR. JOHNSON: Okay. Hearing me?

20 THE COURT: Yes, we can.

21 MR. JOHNSON: Okay. Good afternoon, everybody.

22 BY MR. JOHNSON:

23 Q Good afternoon, Mr. Campagna. I want to -- I will not  
24 ask you questions about (indiscernible) CEL token so you  
25 will be happy, okay? Okay. So I know you have 25 years'



1 experience in this (indiscernible) business, right?

2 A I have 25 years' experience working with distressed  
3 companies, yes.

4 Q Yes. So how many years you have experience in crypto  
5 business advising?

6 A Including this one, since June of 2022. So this is the  
7 first one.

8 Q Okay. So how many years you have experience in bitcoin  
9 mining?

10 A Again, this is the first engagement involving bitcoin  
11 or bitcoin money, crypto or bitcoin mining.

12 Q Okay. So in the last 25 years were you advising this  
13 bankruptcy case, how many unsecured (indiscernible),  
14 unsecured creditor maximally you have seen in one bankruptcy  
15 case?

16 A I'm sorry, I did not pick up all of that question.

17 Q In the 25 years in your experience for the bankruptcy  
18 case (indiscernible) many of unsecured creditor, right? So  
19 in those bankruptcy case, maximally in one case, how many  
20 unsecured creditors you ever see?

21 A I understand the question. The answer is I'm not sure.  
22 But I would think less than 100,000 in any of those cases.

23 Q (indiscernible)?

24 A You're asking about the number of creditors, number of  
25 unsecured creditors in those cases?

1 Q Yes.

2 A Yeah. I don't have a precise answer. But I would  
3 estimate it at less than 100,000.

4 Q Less than 100,000. So in our case, we have nearly one  
5 million unsecured creditors, right? Do you know?

6 A I don't know, but that number sounds high.

7 Q Okay. And for unsecured creditor committee, the seven  
8 member of unsecured creditor committee members is not  
9 elected by our unsecured creditors. They are appointed by  
10 U.S. Trustee. You know that?

11 MS. BRIER: Objection.

12 THE COURT: Sustained.

13 BY MR. JOHNSON:

14 Q Okay. Back to my questions. So I want to ask you  
15 about the exhibit number 47. Okay. Do you see that?

16 A No, I don't have that. Exhibit 37 you mentioned?

17 Q Forty-seven.

18 A Forty-seven.

19 Q And 48.

20 MS. BRIER: Mr. Johnson, did you put exhibits on  
21 the record last night that you intend to enter?

22 MR. JOHNSON: That's debtor -- creditor --  
23 debtor's 47 (indiscernible) Celsius Liquidation Analysis.  
24 And Debtor 48, Celsius Liquidation Analysis Supporting data.

25 MR. COLODNY: Your Honor, I believe this would be

1 the exhibit that Mr. Phillips asked about before.

2 THE COURT: I'm sorry, I can't hear you.

3 MS. BRIER: I think they're talking -- yeah.

4 MR. COLODNY: Your Honor, I believe this is the  
5 exhibit Mr. Phillips asked about, which is Celsius Exhibit 7  
6 in your binder in front of you. And it's Page 269 at the  
7 top. It's in the skinny --

8 MS. BRIER: Your Honor, I think a couple of -- I  
9 think a couple of these questioners have been referencing  
10 Exhibit 47, which is a large Excel that is on Debtor's  
11 exhibit list that underlies his analysis. So they may be  
12 referencing that. We have it available. It's a very large  
13 Excel that's on the exhibit list.

14 THE COURT: You had to post your exhibits last  
15 night by 5:00 if you wanted to use them in cross-  
16 examination.

17 MR. JOHNSON: No, that's not my -- that's not my--

18 THE COURT: Ask your next question, Mr. Johnson.

19 MR. JOHNSON: I mean the exhibit in the  
20 (indiscernible) 3699 and filed by another (indiscernible)  
21 the -- let me see. (indiscernible) document for today's  
22 hearing. But there is cross-examination. I want to use  
23 that document. I think it's -- Your Honor, you have seen  
24 that document.

25 THE COURT: You have to file any documents you

1 wish to use in cross-examination by last night. You did  
2 not. Go on with your examination if you have any.

3 MR. JOHNSON: Is that document (indiscernible) --

4 THE COURT: Don't argue with me, Mr. Johnson. If  
5 you have a question, ask your question of the witness.

6 MR. JOHNSON: Okay. So for the exhibit Debtor 47,  
7 48, 49 --

8 THE COURT: Mr. Johnson, you can't ask about that  
9 exhibit. You didn't send it last night. Ask your next  
10 question. Do you have another question to ask?

11 BY MR. JOHNSON:

12 Q Okay. Mr. Campagna, for the (indiscernible) being  
13 done, you mentioned on your own statement on Page 25,  
14 Paragraph 68.

15 A Page 25, Paragraph 68?

16 Q Yes.

17 A Okay. I'm there. I'm just going to read that  
18 paragraph.

19 Q That (indiscernible) you mentioned it is likely that  
20 (indiscernible) trustee will be liquidating the assets on a  
21 much shorter timeframe (indiscernible) values, right?  
22 (indiscernible)?

23 MS. BRIER: Your Honor, can he repeat that  
24 question? I'm not sure I understood it.

25 THE COURT: Mr. Johnson, we're having a hard time

1 understanding your questions. Can you just repeat it,  
2 please?

3 MR. JOHNSON: Okay. Under Paragraph 68, Mr.  
4 Campagna mentioned that (indiscernible) Chapter 7 trustee  
5 would liquidate the assets on a much shorter timeframe. Is  
6 that what you said?

7 THE COURT: That's what it says. What's your  
8 question?

9 BY MR. JOHNSON:

10 Q Okay. You mentioned that you don't have any experience  
11 in the liquidation (indiscernible) of crypto business and  
12 (indiscernible) bitcoin mining business. Then why you can  
13 have such -- you make such statement that is likely it's a  
14 shorter liquidation timeframe for Chapter 7 trustee? Why?  
15 If you don't have experience, why can say that?

16 A I think the answer is I have experience in Chater 11  
17 cases when they come to the end of a plan out for a vote.  
18 If the answer is no and we have, you know, two paths under  
19 which -- a yes vote is a yes vote for a NewCo. Or in the  
20 alternative, if NewCo can't be completed, a standalone  
21 public mining company and a winddown of the platform  
22 business. If we're unable to enact either of those,  
23 there's not a lot of other places to go other than selling  
24 assets and trying to return fiat cash to people as quickly  
25 as possible, and that's what the estimates underlying the

1 liquidation analysis show.

2 Q Why are trustee 7 (indiscernible) trustee cannot hire  
3 another manager to do the actual same things for the other  
4 wind down?

5 A To do the same thing that the --

6 THE COURT: I'm going to object to the question  
7 myself. This is a matter of law as to what a Chapter 7  
8 trustee must do. Ask your next question.

9 MR. JOHNSON: Okay.

10 BY MR. JOHNSON:

11 Q So back to today's your demonstration. We  
12 can see your doc 367. Today your demonstration, Page 6 of  
13 6.

14 MS. BRIER: Can you repeat the docket number? I  
15 just didn't catch that.

16 MR. JOHNSON: Today, you're fine.

17 THE COURT: Could you just repeat where we're  
18 supposed to be looking?

19 MR. JOHNSON: Yes, there you have a chart. You  
20 have a -- it's a (indiscernible) workflow.

21 THE COURT: Mr. Johnson, I'm sorry, I can't follow  
22 you. What is it that you want the witness to look at?

23 MR. JOHNSON: I want to ask him a question about  
24 the different figure on the wind down and NewCo and  
25 (indiscernible)

1 THE COURT: And is there a specific page in the  
2 exhibit that you want him to look at and that you want me to  
3 look at?

4 MR. JOHNSON: Yes, Page 6 of 6.

5 THE WITNESS: It's the last page of that dec  
6 altogether. I think it's this one again.

7 MR. JOHNSON: The plan and liquidation require  
8 one, four.

9 THE COURT: All right. Go ahead with your  
10 question.

11 MR. JOHNSON: Okay.

12 BY MR. JOHNSON:

13 Q We can see there is a huge difference for the post  
14 emergency coast to the estate between the three sides,  
15 especially for the order being done. We can see there are  
16 not much more difference between these two sides. You can  
17 have nearly 90 million U.S. dollar difference for that cost.  
18 Why that --

19 THE COURT: What's your question?

20 BY MR. JOHNSON:

21 Q Why have such huge difference -- 116,000,075.  
22 What's the difference? Why so big difference?

23 A Are you on the second line of the schedule?

24 Q Yes.

25 A Okay. Under the NewCo scenario, the work that needs to

1 be done is to get the initial crypto distribution out and  
2 perhaps a second distribution out. The initial crypto  
3 distribution isn't always all going to go out in one slug.  
4 There will be multiple with reserves and other mechanics.  
5 It'll take some time. So we've estimated the cost of  
6 maintaining employees and some infrastructure for 6 to 12  
7 months. That's what the \$75 million represents. In the  
8 public minor column, that is an orderly wind down scheduled  
9 for five years. So it's a greater time frame, which results  
10 in increased expenses. And 60 million of those expenses,  
11 roughly, are fees associated with the backup bidder --  
12 included in the backup bidder term sheet. So roughly, 60  
13 million of fees to the backup bidder to run this process and  
14 do a lot of the work behind the scenes. And the rest is  
15 costs of keeping folks around to drive to higher recoveries  
16 on some of the illiquid assets and the like. And then in a  
17 liquidation column, it's approximately \$80 million of costs  
18 to run a Chapter 7 liquidation and have some employees and  
19 pay some fees for selling assets and things of the like.  
20 And \$80 million, which I understand is a statutory rate of  
21 sorts. I don't know that it always has to be the 3 percent,  
22 but 3 percent of distributable proceeds to a Chapter 7  
23 trustee, which is the second 80 million. So 80 million of  
24 real cost, 80 million to the Chapter 7 trustee is  
25 160,000,000 -- the 159 that you see there. That's the math



1 on that at a high level.

2 Q But why you put two quite a different time frame  
3 between NewCo and other wind down?

4 A Because under the NewCo scenario, NewCo is taking all  
5 those illiquid assets and managing them themselves on the  
6 new platform and they're expected to have income generation  
7 of their own that will offset the costs of liquidating those  
8 assets. Under the orderly wind down, there is no NewCo.  
9 There's a standalone mining company that's public on its own  
10 and someone has to, you know, bear the costs of winding down  
11 the remaining assets. NewCo will do that as part of the  
12 transaction for 5 years, 7 years, 10 years, however long it  
13 takes. It's their choice. In the middle column, we've  
14 estimated that to take 4 to 5 years and be done by this plan  
15 administrator and the cost would be borne by the wind down  
16 entity here.

17 Q The older wind down cannot generate extra profit during  
18 that period, but the new code can get extra money --

19 A Correct. Sorry.

20 Q -- from extra business, is that what you mean?

21 A Yes, that's what I mean.

22 Q But your estimation is based on the estimation of a new  
23 code business model, right?

24 A Sorry, say that again.

25 Q So your estimation is based on the new code estimation?

1 A Yes. Mr. Kokinos is in charge of the NewCo business  
2 plan. I know he had an exhibit and a declaration as well,  
3 so I can't really speak to that. But NewCo plans to have  
4 income generating activities separate and apart from mining.

5 Q Okay. So let's go to the nuclear business model that  
6 is also your only document is doc 2902 -- the plan.

7 MS. BRIER: Sorry. Did you say --

8 THE COURT: Sorry, Mr. Johnson, I couldn't  
9 understand you.

10 MR. JOHNSON: I mean we can go to the record. Let  
11 me see. Wait a moment, please. Okay. That's Exhibit E of  
12 disclosure statement.

13 MS. BRIER: Exhibit E of the disclosure statement;  
14 is that what you're looking for?

15 MR. JOHNSON: Yes.

16 MS. BRIER: And which version of the disclosure  
17 statement are you talking about? What docket number are you  
18 looking at?

19 MR. JOHNSON: Docket 2902.

20 MS. BRIER: Okay. I believe that's an older  
21 version of the disclosure statement, but -- and did you put  
22 that on the docket last night? We can pull it up if that  
23 would be helpful. I don't know that we -- it's an older  
24 version we can have someone send it to Mr. Young and show  
25 it, but I don't -- we didn't have advanced notice for that.

1 THE COURT: Well, what's your next question? You  
2 didn't send in -- you didn't file on the docket the  
3 documents you want to use in cross examination today. I'm  
4 giving you leeway.

5 MR. JOHNSON: Your Honor, I'm --

6 THE COURT: You've got to bring your examination  
7 to an end.

8 MR. JOHNSON: Your Honor, another cross-  
9 examination creditor has been serving such exhibit.

10 THE COURT: Mr. Johnson, if you have another  
11 question, ask it or your examination is over.

12 MR. JOHNSON: Okay.

13 BY MR. JOHNSON:

14 Q Mr. Campagna, my question is based on the -- do we know  
15 the hash rate? Do we know Bitcoin Hash rate?

16 A The answer is no, I don't. I'm not a Bitcoin mining  
17 person.

18 Q Okay. The data is advanced modeling (indiscernible) is  
19 a nuclear analysis --

20 THE COURT: All right. Mr. Johnson, this is  
21 beyond the scope of the direct. Your examination is over.  
22 We have one more person who wanted to cross examiner who's  
23 in the courtroom. Come on up. You're not really going to  
24 go through all of that, are you?

25 MR. NOSKOV: Wasn't sure how this is all going to

1 go so --

2 THE COURT: Just make your appearance.

3 MR. NOSKOV: Victor Noskov, Quinn Emanuel for  
4 Pharaoh's fund.

5 MS. BRIER: And, Your Honor -- sorry to interrupt,  
6 but just for purposes of the record, Mr. Noskov is appearing  
7 on behalf of Pharaohs. He filed a 2019 that indicated he's  
8 also appearing on behalf of Nexus, another creditor in this  
9 case. Pharaohs is advancing an objection that liquidation  
10 would be better than the plan because of the NewCo equity.  
11 Just for the record, Nexus advisors has -- and -- or its  
12 affiliates have voted for the plan and have selected equity  
13 as opposed to liquid crypto. So we wanted to notify the  
14 court of that fact and reserve rights of course.

15 THE COURT: You're suggesting Mr. Noskov has a  
16 conflict?

17 MS. BRIER: We're just notifying the court of the  
18 fact and reserving rights to seek discovery on that.

19 THE COURT: Okay.

20 MS. BRIER: We don't know much at this point.

21 THE COURT: Go ahead, Mr. Noskov.

22 MR. NOSKOV: Sure. Your Honor, I have a couple of  
23 binders. May I bring them up to the court and hand to the  
24 witness?

25 THE COURT: Sure. You have copies for other

1 counsel?

2 MR. NOSKOV: All of these are --

3 THE COURT: If you don't, you're not using them.

4 MR. NOSKOV: I'm not going to be using all of  
5 them.

6 THE COURT: Do you have copies for other counsel,  
7 the committee --

8 MR. NOSKOV: These are all --

9 THE COURT: -- and for the debtor?

10 MR. NOSKOV: These are all exhibits. These are  
11 all debtor exhibits and I --

12 THE COURT: Did you post last night a list of --

13 MR. NOSKOV: Of course, Your Honor.

14 THE COURT: Go ahead.

15 MR. NOSKOV: Your Honor, these should all be  
16 familiar to the witness and to the parties.

17 THE COURT: We'll see. Go ahead.

18 BY MR. NOSKOV:

19 Q Mr. Campagna, it's been a long day.

20 A How are you?

21 Q I'm well. How are you?

22 A Good, thanks.

23 Q You're not a lawyer, right, Mr. Campagna?

24 A That's correct.

25 Q But in your declaration, you opine as to the factors

1 for confirmation of a Chapter 11 plan, correct?

2 A I believe I opined on certain factors, yes, that's  
3 true.

4 Q One of those is the best interest of creditors test,  
5 correct?

6 A Yes, it is.

7 Q And the best interest of creditors test is that under a  
8 Chapter 11 plan, the creditors have to get at least as much  
9 in distributions as under a Chapter 7 plan, correct?

10 A Correct.

11 Q So what you're comparing is really the distributions  
12 that go out to creditors in those two scenarios, correct?

13 A Distributions or recoveries, yes.

14 Q Sure.

15 MR. NOSKOV: And could we pull up the  
16 demonstrative that the debtors have been using and others  
17 have used, filed on docket 3697?

18 MS. BRIER: Are you asking Mr. Young to pull that  
19 up?

20 MR. NOSKOV: Yeah, if you could. I have copies if  
21 needed, but I figured we could just --

22 MS. BRIER: Just want to be clear. Yes.

23 THE COURT: All right. I'd like a copy.

24 MS. BRIER: Thank you.

25 MR. NOSKOV: Sure. (indiscernible).

1 MAN 1: I just really think a second.

2 MR. NOSKOV: Sure. Would you like a copy?

3 MAN 2: This one?

4 MR. NOSKOV: Yes.

5 MAN 2: I'm good. Go ahead. I'll just take it.

6 Okay.

7 BY MR. NOSKOV:

8 Q So, Mr. Campagna, this is what you went through with  
9 your counsel in your direct examination and shows the three  
10 scenarios, the NewCo scenario, the orderly wind down  
11 scenario, and the liquidation scenario, correct?

12 A That's correct.

13 Q And these three scenarios are what you compared in  
14 opining, that the best interest of creditors test was  
15 complied with by the debtors, correct?

16 A Yes.

17 Q Now, let's take a look at what composes the value that  
18 you came up with in terms of the value of the NewCo. So  
19 that's just the first column.

20 A Okay.

21 Q We've been having and that is the mining business,  
22 right, which is valued at 565,000,000?

23 A That's correct.

24 Q The illiquid assets, other, 283,000,000?

25 A Correct.

1 Q And the seed capital, 450,000,000, correct?

2 A Right. And there's a nuance there where 50 of the seed  
3 capital was included in the mining valuations. That's the  
4 \$50 million deduction you see in that same section, but yes.

5 Q And the seed capital, is that cash?

6 A Crypto.

7 Q That's Crypto. What kind of Crypto? Is that,  
8 Ethereum?

9 A It'll be BTC and/or Ethereum. I think it's the choice  
10 of -- Fahrenheit's choice.

11 Q Hasn't been decided yet?

12 A Correct.

13 Q But it's not going to be -- it could be Bitcoin?

14 A I believe so.

15 Q Now, the numbers that you have here, right, the  
16 \$565,000,000 number for the mining business. You testified  
17 earlier that that was a number that you took from the center  
18 view analysis of the valuation of the mining business,  
19 correct?

20 A That's correct.

21 Q And you've reviewed the valuation analysis provided by  
22 Mr. Kielty, correct?

23 A I likely read the one page from the disclosure  
24 statement exhibit -- two page.

25 Q Have you read Mr. Kielty's declaration?



1 A I don't believe I have.

2 Q Okay. Are you aware that the number -- the  
3 \$565,000,000 valuation is a valuation of the net asset value  
4 of the mining business?

5 A I'm not aware of what type of valuation it is, but I  
6 would -- yeah.

7 Q You're not aware whether it's a market valuation or a  
8 net asset valuation?

9 A Mr. Kielty yesterday testified that it was based on  
10 market comps and discounted cash flow analysis. So it seems  
11 as though it's a going concern valuation of the entity.

12 Q Could we pull up or could you turn in your binder to  
13 Exhibit 45, which is Ryan Kielty's declaration, please?

14 A I'm sorry, which (indiscernible)?

15 Q It's 45.

16 A Just going to have to make space here.

17 Q If you could turn to Paragraph 13 when you get there.

18 MS. BRIER: And, Your Honor -- go ahead.

19 BY MR. NOSKOV:

20 A Okay. I'm on Paragraph 13.

21 Q You see the second sentence says, these estimates --  
22 let's start in the first sentence. The mining valuation  
23 analysis was prepared solely to assist the debtors in  
24 formulating the plan and to analyze implied relative  
25 recoveries to creditors thereunder; you see that there?

1 A I do.

2 Q These estimates do not purport to reflect or constitute  
3 appraisals, liquidation values, or estimates of the actual  
4 market value that may be realized through the sale of any  
5 securities in NewCo; you see that there?

6 A I do.

7 Q Did -- were you aware before reading that sentence that  
8 the analysis was not meant to reflect any market value that  
9 may be realized through the sale of any securities in NewCo?

10 A I was not aware of any comment on securities.

11 Q The securities in NewCo, that's referencing the NewCo  
12 shares, correct?

13 A I don't know what it's referencing.

14 Q Upon the formation of NewCo, there will be NewCo common  
15 stock that will be distributed to creditors through the  
16 plan?

17 A Yes.

18 Q And so, is it your understanding that the analysis of -  
19 - the mining valuation analysis was supposed to value the  
20 shares, the common stock of NewCo that was supposed to be  
21 distributed under the plan?

22 A It's not my understanding, but it'd be a better  
23 question for Mr. Kielty.

24 Q But is it -- but, no -- well, I agree that you've  
25 testified earlier --

1 THE COURT: Just ask him questions.

2 BY MR. NOSKOV:

3 Q You testified earlier that you did not do the  
4 mining valuation analysis, correct?

5 A That's correct.

6 Q You accepted the analysis and you imported that into  
7 your analysis of the total value of NewCo, correct?

8 A As a line item in the NewCo column, yes.

9 Q That's right. But you were not aware at the time that  
10 that line item represented not a market valuation but a net  
11 asset valuation of the mining business?

12 MR. WEEDMAN: Objection, Your Honor.

13 THE COURT: Overruled.

14 BY MR. NOSKOV:

15 A Where does it say net asset value of mining?

16 Q Well, let's try an easier way. Do you have your --

17 THE COURT: Does it say net asset value? He asked  
18 you -- you asked him a question. He asked you a question  
19 back. It was a fair question in light of your question.

20 MR. NOSKOV: Sure, of course.

21 THE COURT: Are you representing that it's --

22 MR. NOSKOV: I can flip to that. I thought it'd  
23 be easier to point him to his own declaration, which has  
24 been admitted into evidence where he says the same thing,  
25 but I can --

1 THE COURT: Let's move on. Ask your next  
2 question.

3 BY MR. NOSKOV:

4 Q Could we --

5 THE COURT: Ask your next question.

6 BY MR. NOSKOV:

7 Q Apologies, Mr. Campagna. I would like to just  
8 point you to your own declaration, Exhibit 46 in the binder  
9 there or if you have it separately.

10 A I'll go with yours to keep it in one place here.  
11 Okay. I'm there.

12 Q Paragraph 56 of your declaration, please.

13 A Okay.

14 Q To prepare this liquidation analysis, the debtors, with  
15 the assistance of their advisor, estimated proceeds, costs  
16 and resulting recoveries, in either the event that the  
17 plaintiffs confirmed and consummated, or in the event the  
18 plan is converted to a liquidation under Chapter 7 of the  
19 Bankruptcy Code. The debtors, supported by their advisors  
20 estimated creditor recoveries under the NewCo transactions,  
21 including on account of NewCo common stock based on the net  
22 asset value of NewCo, which is approximated to be 1.248  
23 billion and consists of the following components, and it  
24 goes on. You see there where it says net asset value of  
25 NewCo?

1 A I do.

2 Q Correct. Was your analysis of NewCo supposed to be a  
3 market value analysis of NewCo or a net asset value analysis  
4 of NewCo?

5 A My analysis wasn't meant to be anything in particular.  
6 But the mathematics behind the 1,000,000,248 is a market  
7 valuation of mining for 565,000,000 that was conducted by  
8 Centerview. 283,000,000 of illiquid assets valued by Stout  
9 \$450,000,000 of liquid crypto. We simply did the math.  
10 It's 1 billion, 248. It's a combination of assets and a  
11 market valuation.

12 Q And you mentioned Stout did the valuation of the liquid  
13 assets, who did the valuation of the seed capital?

14 A It's a numerical figure in the Fahrenheit Agreement.  
15 We just need to give them 450,000,000 of liquid crypto at  
16 closing. It's market based.

17 Q It's market based for the crypto standalone?

18 THE COURT: I don't know what you mean by  
19 standalone.

20 THE WITNESS: Yeah. I don't either.

21 MR. NOSKOV: I can rephrase, Your Honor.

22 BY MR. NOSKOV:

23 Q It's the value of those crypto assets that are not  
24 valued as part of a NewCo business that will be formed under  
25 the plan. They were valued separately, correct?

1 A Yeah. I'd say that one's less of a value, more of  
2 a transfer from what would otherwise be liquid crypto going  
3 to creditors at Emergence to shift a portion to NewCo based  
4 on, you know, whatever the price is on that day, divided by  
5 the Bitcoin price. If we're giving them all BTC, which we  
6 won't, I don't think that would be their suggestion, but  
7 it's just going to be math on that day and hand them that  
8 appropriate number of coins.

9 Q Understood. And that amount, in your mathematical  
10 exercise of adding it up, is not discounted by any amount.  
11 You're attributing 100 percent of that value to the  
12 Enterprise value?

13 A That's right.

14 Q And same with the \$565,000,000 in value you got from  
15 another advisor as well, from Centerview, you're not  
16 discounting that amount when you put it together with the  
17 other assets, are you?

18 A No. In the NewCo column it was based upon ownership  
19 under the proposed plan of reorganization by the Fahrenheit  
20 Group and that asset being run by U.S. Bitcoin, so, no,  
21 there's no discount to that.

22 Q Right. And then same with the liquid assets, you took  
23 the number that staff came up with on a standalone number  
24 for those assets, you added it together and you -- and that  
25 became part of your net asset value of 1.248 billion,

1 correct?

2 A Largely. I think we made an adjustment to two items.  
3 Two items as a result of additional information we had that  
4 Stout didn't have.

5 Q What were those two items?

6 THE COURT: What were those adjustments?

7 THE WITNESS: One related to a loan from a party  
8 called EFH, who we've since initiated significant litigation  
9 with, and it called into question the collectability of that  
10 loan. So we marked it down from -- I can look at the Stout  
11 number, it's in their expert report. I don't remember  
12 positively, but I believe we marked it down from 196,000,000  
13 to something south of 50 million in both the NewCo and the  
14 early wind down column. And that became the starting point  
15 for the liquidation. And similarly, we discounted the  
16 number they had calculated for StakeHound due to litigation  
17 that was -- it may have been somewhat ongoing, but we had  
18 new facts and circumstances that led us to just discount it  
19 a bit more. And again, whatever that discount is, it's  
20 consistent in NewCo and orderly wind down, and then, you  
21 know, the liquidation discount would have been applied from  
22 there. So the methodology is consistent, but you'll see  
23 differences from Stout.

24 BY MR. NOSKOV:

25 Q And we're talking about Centerview. We're talking

1 about Stout in terms of what A&M did in coming up with the  
2 1.248 million number. You did not adjust the sum of these  
3 numbers other than the adjustment you just talked about for  
4 any other reason. You simply took the standalone value of  
5 the mining business, the liquid assets, and the seed  
6 capital, and you added it together to get to 1.248 million  
7 minus the \$50 million of seed, correct?

8 A That is right, yes.

9 Q And there's no other advisor that the debtors have that  
10 is valuing the market value of that NewCo all as one, as a  
11 conglomerate?

12 A No.

13 Q In your job as -- and your experience at A&M over the  
14 years, are you aware of the concept of a hold code discount?

15 A No, I'm not.

16 Q You're not aware of a concept that sometimes the sum of  
17 all parts isn't valued by the market as highly as those  
18 parts valued separately?

19 A No, I'm not.

20 Q And so, you didn't consider whether that could be the  
21 case with these particular assets when you put them together  
22 into NewCo?

23 A That sounds like it's moving into business valuation,  
24 and that's not my expertise.

25 Q I'm not asking to be clear about the valuation of the



1 mining business itself, which Centerview conducted. I'm  
2 asking about the value of distributions that will ultimately  
3 go to creditors --

4 THE COURT: Ask your question.

5 BY MR. NOSKOV:

6 Q -- of the estate.

7 THE COURT: Ask a question.

8 BY MR. NOSKOV:

9 Q So my question is, who was put into -- in charge by the  
10 debtors then, if it wasn't A&M to value -- the total value  
11 of the distributions that will go to creditors upon  
12 confirmation of the plan?

13 A The value was described as the sum of those parts that  
14 you just mentioned.

15 Q And to --

16 A It's not marked as a business valuation of NewCo's  
17 equity. It's marked, at least on this page, as  
18 distributable liquid assets/net asset value.

19 Q And I believe I heard you correctly, you did not apply  
20 any discount based on an analysis that may have concluded  
21 that when you combined these types of assets, the overall  
22 value of the stock on the market would go down, you didn't  
23 do that analysis?

24 MS. BRIER: Objection, Your Honor. Asked and  
25 answered.

1 THE COURT: Overruled.

2 BY MR. NOSKOV:

3 A I did not do that analysis, nor is it analysis I would  
4 be -- it wouldn't fall to me that analysis.

5 Q Did you analyze, as part of your evaluation of the  
6 NewCo value, any comparable companies that are a combination  
7 of these types of assets?

8 MS. BRIER: Objection.

9 BY MR. NOSKOV:

10 A I didn't -- yeah -- I didn't connect evaluation of  
11 NewCo.

12 Q But you did provide a value that would be distributable  
13 to creditors on account of the newly formed NewCo entity,  
14 correct?

15 A We provided the numbers that are on this page for folks  
16 to decide, make their own decisions.

17 Q So as part of that analysis of the net asset  
18 value/distributable -- the total -- apologies. As part of  
19 that analysis of the total distributable value to creditors,  
20 you did not analyze any comparable companies that combined  
21 these types of assets all into one?

22 MS. BRIER: Objection.

23 THE COURT: Overruled.

24 BY MR. NOSKOV:

25 A I did not.

1 Q To receive a distribution in NewCo stock, a creditor  
2 who receives that stock would have to be able to sell the  
3 stock, correct?

4 A Say your question again.

5 Q In order to receive any value from the stock that a  
6 creditor receives, that creditor would have to be able to  
7 monetize the stock somehow, correct?

8 MS. BRIER: Objection.

9 THE COURT: Overruled.

10 BY MR. NOSKOV:

11 A They may be able to take a margin loan on it. I don't  
12 know how to answer that question. There may be other ways  
13 to monetize the asset without selling it and taking --  
14 losing ownership.

15 Q Let me be a little bit more general. A creditor has to  
16 find someone else that would be willing to attribute value  
17 to that asset in order to gain some value from it for the  
18 creditor, correct?

19 A I'm not quite sure I follow that question. It seems to  
20 be going into, is there a market? And I just can't speak to  
21 markets, I'm not -- it seems like an investment banker type  
22 thing.

23 Q You didn't analyze what the market would be for NewCo  
24 shares, did you?

25 A I did not.

1 Q And yet the distribution under the plan, part of that  
2 distribution is the stock of the NewCo, correct?

3 A That's correct.

4 Q So without assessing the value of the NewCo stock as it  
5 could be sold on the market, you still applied in your  
6 declaration that the best interest of creditor test is  
7 satisfied, correct?

8 A That's right.

9 Q And that's without any analysis of what the NewCo  
10 common stock is actually worth to the creditors as a  
11 distribution?

12 A It's based on an assessment that it has a mining  
13 business worth 565,000,000, illiquid assets valued at  
14 283,000,000, and seed capital with a market rate of a net  
15 400 million.

16 Q And then it's all packaged together, correct?

17 A That's right.

18 Q There's a common stock that is going to be listed on  
19 Nasdaq, correct?

20 A It's my understanding.

21 Q And then that common stock will have a price that can  
22 be sold or traded by the creditor that receives that stock,  
23 correct?

24 A That's right.

25 Q And the value that they will receive in return, you did

1 not do an analysis of that value at all?

2 A Right. It could be higher; it could be lower. That's  
3 right. We didn't analyze it.

4 Q Did you come up with a range of how much higher, how  
5 much lower it could be?

6 A I did not.

7 Q And did you consider what the profile of any purchaser  
8 of such a stock could be from any creditor that received  
9 such stock?

10 A I did not.

11 Q Can we go to Exhibit three, please? Which is the --  
12 it's in my binder. It's the debtor's disclosure statement.  
13 I've heard earlier maybe the wrong version of the debtor's  
14 disclosure statement, but it is a Celsius Three Exhibit so -  
15 -

16 A Yeah, this is -- this looks like the very first --

17 MR. MCCARRICK: For the record, parts have been  
18 updated, so you could pull that from the docket if you want  
19 the most updated, but we can work with this one.

20 MR. NOSKOV: If we go to page --

21 MR. COLODNY: What's the number?

22 MR. NOSKOV: Docket number 2902.

23 MR. COLODNY: What page?

24 MR. NOSKOV: 0627.

25 THE COURT: What page?

1 MR. COLODNY: June 27?

2 MR. NOSKOV: Yes. Page 210 out of 332.

3 MR. COLODNY: Your Honor, I believe this document  
4 he's referring to is two versions still.

5 THE WITNESS: It is.

6 THE COURT: It is what?

7 MR. COLODNY: Two versions (indiscernible) from  
8 the operative disclosure statement?

9 THE WITNESS: I think there's a fourth that was  
10 the solicitation version.

11 THE COURT: Are you objecting?

12 MR. COLODNY: I am objecting, yes.

13 THE COURT: Sustained.

14 BY MR. NOSKOV:

15 Q Your Honor, the debtors submitted this Celsius Exhibit  
16 3 in this proceeding.

17 THE COURT: Is it admitted in evidence?

18 MS. BRIER: It's not, Your Honor. Parts of it  
19 are. Exhibits to it that have not changed since that  
20 disclosure statement was filed are in evidence. The entire  
21 document is not in evidence.

22 MR. NOSKOV: Sure. Your Honor, I'm not offering  
23 it into evidence. I'd just like to show it to the witness  
24 to see if he is -- just to use it for cross.

25 THE COURT: We'll see. What page?

1 MR. NOSKOV: Page 210.

2 THE WITNESS: I'm on Page 210.

3 BY MR. NOSKOV:

4 Q You see the subtitle 16?

5 A Yes.

6 Q It's titled the liquid trading market for the NewCo  
7 common stock may not develop, and the trading price for the  
8 NewCo common stock may be depressed or volatile following  
9 the effective date; see that?

10 A I do.

11 Q You disagree with that?

12 A No. That's certainly a risk.

13 Q And you see -- if you read further down, the second  
14 sentence of that paragraph says, accordingly, there can be  
15 no assurance that an active trading market for the NewCo  
16 common stock -- I think there's a typo -- will develop. Nor  
17 can any assurance be given as to the liquidity or prices at  
18 which securities might be traded; you see that?

19 A I do.

20 Q Do you disagree with that?

21 A No, we're certainly not giving any assurance or  
22 guarantees.

23 Q And so, when you talk about distributions to creditors  
24 on account of stock distributed under the plan, you have no  
25 idea what the value of that stock or the price at which it

1 would be traded is, do you?

2 A That's why we relied on market valuations and asset  
3 valuations. We don't know where the stock will trade.

4 Q Market valuations, per your testimony, of the  
5 individual component parts of the NewCo, not the entire,  
6 enterprise, correct?

7 A That's correct.

8 Q You mentioned earlier that this is your first case  
9 dealing with crypto, correct?

10 A That's right.

11 Q So on what basis did you determine that combining  
12 potentially different crypto assets like Ethereum and  
13 Bitcoin, that the fact that those two are being combined in  
14 a new enterprise shouldn't result or should result in a  
15 discount?

16 A I'm not sure how to answer that question.

17 Q You did not consider whether a discount to the separate  
18 parts of each of these items, the mining, the liquid assets,  
19 and the seed capital should be discounted? You didn't  
20 consider the possibility that should be part of your  
21 analysis, correct?

22 A Right, I didn't consider the possibility of a premium  
23 or discount, correct.

24 Q So how are you qualified to determine how those assets  
25 should be added together as part of one enterprise and how



1 that enterprise should be valued?

2 A I feel qualified to do that math. That's it.

3 (indiscernible)

4 Q So that's all you've done? You just typed in the  
5 numbers into a calculator?

6 A No, we did a lot of work behind the scenes on those  
7 numbers, but at the end of the day, we added those four  
8 components together and put it out there for the world to  
9 see and make a determination.

10 Q But as a standalone enterprise --

11 THE COURT: With risk factors included?

12 THE WITNESS: Right. Risk factors included.

13 BY MR. NOSKOV:

14 Q Risk factors included as to the individual pieces,  
15 correct?

16 A To a whole list of risk factors. But the one that you  
17 just mentioned, with respect to where NewCo stock may trade.

18 Q Do -- I'm sorry -- you applied a discount based on  
19 those risk factors to the total amount once you added that  
20 together?

21 A No. We did not place a discount for risks or any  
22 premium for opportunities that NewCo would trade higher.

23 Q And without any experience in the crypto world, would  
24 you have passed --

25 THE COURT: Ask your next question. You've

1 already asked that.

2 BY MR. NOSKOV:

3 Q I just want to get a little bit deeper. And this is  
4 not to probe your view of the reasonableness or not  
5 reasonableness of the mining valuation analysis, but I'd  
6 like you to take a look at Exhibit 45, Mr. Kielty's  
7 declaration.

8 A Okay. I'm at 45.

9 Q And you based your value again, I'm sorry to repeat  
10 myself, on the analysis that Centerview conducted in this  
11 case, correct?

12 MS. BRIER: Your Honor, at this point, if he had--

13 THE COURT: Sustained.

14 MS. BRIER: -- questions for Mr. Kielty, should  
15 have asked him yesterday.

16 THE COURT: Ask new questions and move on.

17 BY MR. NOSKOV:

18 Q If you turn to Paragraph 11 of Mr. Kielty's  
19 declaration. Let me know when you're there.

20 A I'm there. Sorry.

21 MS. BRIER: Paragraph 11.

22 BY MR. NOSKOV:

23 Q You see, the third sentence of Paragraph 11 says, the  
24 mining valuation analysis is, among other things, based on  
25 the information and financial projections provided by the

1 debtor's management and certain other publicly available  
2 information, correct?

3 A That's what it says.

4 Q So that valuation was based on the financial  
5 projections, at least, in part?

6 A Correct.

7 Q Let's turn to the financial projections. And again, I  
8 don't want to probe the reasonableness of this. This isn't  
9 the point of this questioning. Exhibit 32 is the financial  
10 projections. If you could turn to that's. And when you get  
11 there that's the mining business plan.

12 A I'm there.

13 Q If you could go to slide three. Sorry, it's actually  
14 slide two. It's third in the, you know, PDF. Slide two.

15 A Okay.

16 Q And this is the five-year projections, correct?

17 A No audible response.

18 Q But first of all, have you seen this document? Have  
19 you ever reviewed the financial projections?

20 A I've seen versions of this document. I don't know if  
21 I've seen the final version before.

22 Q Well, you're generally (indiscernible) with the  
23 financial projections of the company?

24 A No, not really. Not of the mining business. Mr.  
25 Ferarro spoke to the mining projections a bit yesterday.

1 Q Earlier, you were speaking in a lot of detail about the  
2 various mining operations of the debtors. Is that not part  
3 of your mandate to kind of know what's going on with the  
4 business and what the projections are?

5 MS. BRIER: Objection.

6 BY MR. NOSKOV:

7 A I know generally what's going on with the business.  
8 This is a five-year projection based upon changing Bitcoin  
9 prices in the future, changing hash rates. A lot of true  
10 expertise that I don't feel that I'm the best person to  
11 address.

12 Q Can we take a look at -- you see the date September 23,  
13 September 24, September 25?

14 A I do.

15 Q Under September 25, that's 2025. If you look down that  
16 list, you see the BTC price there?

17 A I do.

18 Q That's 90,587, correct?

19 A I'm sorry, maybe I'm not looking in the right place.  
20 Oh, yes, I see it. Sorry, I was looking a couple of lines  
21 down.

22 Q So the projection under this business plan, the five-  
23 year projection, is that in two years the Bitcoin price  
24 would be 90,000?

25 MS. BRIER: Your Honor, I renew my objection that

1 these questions are better asked if Mr. Kielty.

2 THE COURT: Sustained.

3 MR. NOSKOV: Your Honor --

4 THE COURT: No, you can't dig into this. This is  
5 not this witness's document. He is not giving an opinion on  
6 what's in this document.

7 MR. NOSKOV: This is relevant to the convict to  
8 how he --

9 THE COURT: Ask the question that's relevant to  
10 the cross examination of this witness. This is not.  
11 Objection is sustained.

12 BY MR. NOSKOV:

13 Q Mr. Campagna, do you think that the nature of a  
14 business and financial projections underlying that business  
15 affect how that business can be combined with another  
16 business all in one enterprise?

17 A That's a bit of a complex question, but there's  
18 uncertainties in any business as to how a combination will  
19 turn out.

20 Q Would you agree that the value of the crypto business,  
21 including the NewCo which you looked at the value of, would  
22 depend on the value of the underlying cryptocurrency?

23 A I mean, to some degree, yes, but --

24 Q And would you agree that there is a relationship  
25 between the value of Bitcoin and the value of Ethereum?

1 A There is.

2 Q And is that relationship linear?

3 A I don't know.

4 Q You can't opine on whether if Bitcoin goes up, Ethereum  
5 goes down or vice versa?

6 A I can't opine on how they move for one versus the  
7 other. I think generally they would move in a similar  
8 direction.

9 Q Your view is that they would move in similar direction?

10 A Push -- yeah.

11 MS. BRIER: Objection.

12 BY MR. NOSKOV:

13 Q And so, you didn't think that --

14 THE COURT: Why is this examination within the  
15 scope of the direct? You're asking him about an evaluation  
16 done by different experts which he used in his analysis.

17 MS. BRIER: And, Your Honor, I don't -- sorry.

18 THE COURT: Mr. Kielty's cross examination was the  
19 time to do this, not now.

20 MR. NOSKOV: May I answer?

21 THE COURT: No. Move on.

22 MS. BRIER: And, Your Honor, I'd also note for  
23 purposes of the record, that Exhibit 32 is not in evidence  
24 that he was asking about.

25 BY MR. NOSKOV:

1 Q Mr. Campagna, are you aware that generally, with the  
2 options offered to creditors under the plan and the choices  
3 they could have made with regard to their distributions?

4 A I know there were a lot of them. I'm familiar with  
5 some of them.

6 Q Are you aware that the creditors, when voting on the  
7 plan in certain classes, had the choice to either get the  
8 default distribution ratio to get a distribution that had  
9 more new stock and less liquid crypto, and then another  
10 choice to get more liquid crypto and less new stock?

11 A Yes, I'm familiar with that provision.

12 Q Are you familiar with the outcomes of how that -- those  
13 determinations and votes by creditors went under the  
14 liquidation now under the plan?

15 A Yes, generally.

16 Q Would it surprise you that significantly more creditors  
17 elected the crypto weighted option?

18 A Say that again.

19 Q Would it surprise you, Mr. Campagna, that significantly  
20 more creditors elected the crypto weighted option?

21 A I know that more creditors chose that option. I don't  
22 know. I wouldn't use the word surprise.

23 Q You know for a fact that that is true?

24 A I know that that -- that's the way that vote, yes.

25 That's the way that election -- there's more liquid crypto -

1 - more selected, more liquid crypto than equity.

2 Q And those creditors that selected more liquid crypto,  
3 that liquid crypto was distributed to them at a 30 percent  
4 discount, correct?

5 A There's a 30 percent, yes. Depends which way you go on  
6 that mechanism. But there's a 30 percent premium on the  
7 liquid crypto versus the equity.

8 Q Let's make it easier. It's quite a bit complicated.  
9 If we look at just at the Exhibit 3 again. We don't need to  
10 move it into evidence. We can just look at it as a  
11 demonstrative to show how this mechanism works. Exhibit 3  
12 at Page 43.

13 THE COURT: 43 of 332 or --

14 THE WITNESS: One second.

15 THE COURT: There are page numbers at the top and  
16 bottom.

17 MR. NOSKOV: Yeah. No. I'm sorry, Your Honor.

18 THE WITNESS: It's 54 of 332, I think.

19 MR. NOSKOV: It's 54 on the top. If you're  
20 looking at 54 --

21 THE COURT: All right. 54 of 332 of Celsius  
22 Exhibit 3.

23 BY MR. NOSKOV:

24 Q Are you there?

25 A Yes, I am.



1 Q You see the table there?

2 A I do.

3 Q So this is a table that provides an example for  
4 outcomes of a holder of general claims in the amount of  
5 10,000, just to make it easy for us, correct?

6 A Correct.

7 Q So you see the no election default, you get just a  
8 little over 36 percent of liquid cryptocurrency, or I  
9 apologize, you get 3,642 in liquid cryptocurrency and 3,328  
10 in new common stock?

11 A Right. That's what it says.

12 Q Right. And then if you elect the -- and the total  
13 recovery percentage is estimated below that, or those two  
14 numbers are added up to give you 6,970, right?

15 A That's what's on the page, yes.

16 Q And this is the debtor's view of the value of the  
17 stock, you know, of the distribution of the stock and the  
18 crypto together. So you're getting \$0.69 on the dollar?

19 A That's right.

20 MS. BRIER: Objection.

21 BY MR. NOSKOV:

22 Q The next column is the NewCo common stock weighted  
23 distribution election. And that one gives you a premium on  
24 if you elect more new common stock, correct?

25 A Yeah, I'd have to do the math, but it looks like that's

1 what it's doing, yes.

2 Q And so, the value, according to the debtors comes out  
3 below to 7,516. With the debtor's valuation of the new  
4 common stock, you're getting a better deal here for  
5 creditors, correct?

6 A Yes.

7 Q And the next one is the liquid cryptocurrency weighted  
8 distribution election. And that's where you choose more  
9 liquid crypto, but you get less common stock, correct?

10 A Correct.

11 Q And that's where there's a 30 percent discount,  
12 correct?

13 A Yeah. Without doing the math to calculate those  
14 numbers, directionally, it's moving that way, yes.

15 Q And according to the debtors, that provides the  
16 smallest of the three values at 6,424, correct?

17 A According to this page, yes.

18 Q And yet, as you've testified, you know for a fact that  
19 creditors chose the third option over the other two. More  
20 creditors chose the third option than the other two?

21 A That's correct.

22 Q So in terms of the market participants that have  
23 actually acted and have spoken with their wallets --

24 THE COURT: You're putting a lot into that  
25 question that there's nothing in the record for. I'm going

1 to sustain even before you go on, frame a new question.

2 BY MR. NOSKOV:

3 Q Let's go back to the -- no, let's stay here. And so,  
4 the creditors who chose the crypto heavy distribution,  
5 voluntarily chose a 30 percent haircut on the new stock  
6 value, correct?

7 A That's the mathematical deal, yes.

8 Q Don't you agree that that's market evidence that  
9 creditors don't value NewCo stock as high as the debtors do?

10 MS. BRIER: Objection.

11 MR. COLODNY: Objection. Calls for speculation.

12 THE COURT: Sustained.

13 BY MR. NOSKOV:

14 Q When valuing NewCo, did you consider the outcome of  
15 this vote by creditors?

16 A I didn't value NewCo.

17 Q When you came up with the total distributable value of  
18 NewCo, did you consider this vote by creditors?

19 A The vote hadn't been completed, no.

20 Q If you could go back, would you?

21 MS. BRIER: Objection.

22 THE COURT: Overruled.

23 BY MR. NOSKOV:

24 A I would do the math the same way we did it in the  
25 disclosure state. No, I wouldn't have changed it.

1 Q This evidence of the vote wouldn't affect the way that  
2 you value the total distributable value?

3 A No. It doesn't affect the valuation of mining, doesn't  
4 affect the asset valuation done by Stout, and it doesn't  
5 affect 450,000,000 illiquid cryptos -- 450,000,000 illiquid  
6 crypto.

7 Q Let's just shift quickly to plan B. There's an orderly  
8 wind down option, correct?

9 A Correct.

10 Q In your declaration, you state that the orderly wind  
11 down process would take five years, correct?

12 A We allotted five years for that administrator to wind  
13 down the assets, maximize value, yes.

14 Q Is the five year number is just the underlying  
15 assumption for how long that'll take?

16 A That's right.

17 Q And how did you arrive at the five-year number?

18 A Some input from the bidders. I feel like that's what  
19 folks were indicating on the inbound side was it be a four-  
20 to-five-year process. But, you know, as we look at this,  
21 these wind downs go for quite some time. I think the bulk  
22 of the work is in the early years, but they go on for quite  
23 some time. And these are very unusual illiquid assets. And  
24 the thought was some of them it just makes sense to hold  
25 onto. And that may be what the plan administrator wants to

1 do. So we just gave them time to work it out.

2 Q So was it based on comparables to other similar wind  
3 downs?

4 A It was just an estimate we came up with. I don't know  
5 that we looked at a lot of similar wind downs, but, you  
6 know, I do know -- there's not similar wind downs that I've  
7 experienced. A lot of the wind downs are -- here's a bucket  
8 of money, a million dollars to go to a basket of unsecured  
9 creditors, figure out the claims, distribute, start closing  
10 up the entities. Maybe you have a miscellaneous asset or  
11 two to sell. Those can be done in a couple of years. But  
12 the estate keeps going for four years -- four or five years,  
13 it seems, before they finally get closed up and the case is  
14 closed. So that's sort of the methodology we applied here.  
15 We just thought that the operational time frame here to  
16 maximize value of these crypto assets, and these  
17 investments, and private equity type investments in a  
18 variety of crypto entities, debt securities and crypto  
19 entities, it would just take more time. So we had the  
20 operational phase a bit longer.

21 Q None of this analysis is in your declaration, however,  
22 correct?

23 A It (indiscernible) the expense component, but no.

24 Q Did you analyze when distributions would be made to  
25 holders throughout this five-year period?

1 A At a high level.

2 Q And where is that in your declaration?

3 A Not sure if it's in the declaration, I have to check,  
4 but it's definitely in the disclosure statement. There was  
5 a chart on Page 11 or 12 that showed timing of  
6 distributions.

7 Q And did you discount the distributions based on the  
8 time value of money in that --

9 A No, we didn't.

10 Q A dollar today is worth more than a dollar tomorrow, is  
11 it not?

12 A It is.

13 Q Yet you valued a dollar distributed in five years, the  
14 same as a dollar distributed in one?

15 A A big piece of the value to be distributed, even in the  
16 orderly wind down is the equity value of the mining  
17 business. So that's virtually unchanged between the two  
18 analyses and the concept on some of these other assets, if  
19 you hold them to (indiscernible) you'll get more. So we  
20 didn't project getting more and we didn't project the  
21 discounted cash flow of bringing back the sums. And our  
22 comparative point was everything happening in NewCo upfront.  
23 So we just -- that's the way we left the analysis.

24 Q Those are two separate things. You're talking about  
25 the growth of the value of the asset. I'm talking about

1 just the value -- the discount over time that you would  
2 apply to any asset you're not getting today, but are getting  
3 tomorrow?

4 A Agree. But as Bitcoin rises, right, the value of all  
5 these assets rise as well. We didn't forecast an increasing  
6 BTC price over time that could have an upward impact on the  
7 value of the assets. But I agree with you, all things being  
8 consistent, a dollar today is worth more than a dollar  
9 tomorrow.

10 Q And so, without applying that discount, the  
11 distribution of the total sum of dollars is overstated in  
12 your analysis, correct?

13 A I don't know that it is. There would be increasing  
14 values as well. You'd stake Ethereum, the company would  
15 have assets that they could invest for periods of time. So  
16 I think there's puts and takes.

17 Q Those are value increasing strategies, though. That's  
18 not a discounted analysis of distributions to creditors, is  
19 it?

20 A That's a value accredited concept, correct. It's not -  
21 - but if we were sitting on a billion dollars of crypto that  
22 was waiting to be distributed, perhaps they would stake it  
23 and try and earn a return or, you know, do something low  
24 risk and have a return. We don't have that return in here  
25 either, but, you know.

1 Q But if you're telling a creditor you're going to get  
2 \$1,000, the first question is when; is that not right?

3 THE COURT: Hold on.

4 BY MR. NOSKOV:

5 Q Chapter 7 liquidation, however, is not five years  
6 according to your analysis, you assumed six months, correct?

7 A Yeah, we assumed that the assets would be liquidated  
8 and largely distributed in six months. It would have a tail  
9 as well, but, you know, nominal work for a period of time,  
10 one person, you know, continuing to try and wind up the  
11 entities. But we did forecast that the bulk of the assets  
12 and distributions would be made in six months.

13 Q And a dollar in 6 months is worth more than a dollar in  
14 12 months, correct?

15 THE COURT: Hold on.

16 BY MR. NOSKOV:

17 Q You mentioned during earlier testimony that the  
18 distributions in the NewCo scenario may not occur for 6 to  
19 12 months; did I hear that right?

20 A The -- I think you did hear about right. We're trying  
21 to distribute two things, BTC, as quickly as possible. We  
22 still are finalizing our arrangements with PayPal, Coinbase  
23 and the like. So until those are done, there's going to be  
24 no distributions that can be made. We have to get the  
25 confirmation. We have to also, on the public miner, there's



1     also an SEC process that's running. So yeah, it'll take --  
2     we're hoping to start by the end of the year and do it  
3     quickly, but there's no guarantee as to when it'll start.  
4     And once it starts, whatever the amount of crypto we have to  
5     distribute, some portions will be held back for claims  
6     reserves and the like, and there'll be another distribution  
7     down the road, so it'll take a little while.

8     Q     But like the orderly wind down analysis of  
9     distributions, you didn't discount the distributions under  
10    the NewCo scenario either, did you?

11    A     No, we didn't.

12    Q     I know you're not a lawyer, but for the Chapter 7  
13    liquidation analysis that you did, did you consider whether  
14    the mining assets could be sold as a going concern?

15    A     Not in the analysis. We looked at it. I think I  
16    discussed it earlier as part of this testimony. There was a  
17    bid in the \$175,000,000 range that had a lot of outs and a  
18    lot of things the buyer had to do before it would even  
19    become executable, including raising 275,000,000 to then  
20    have 175 go to the debtors in the form of some cash and some  
21    debt. And I know our investment banker viewed the  
22    likelihood of them being able to raise the 275 as very  
23    slight, and it wasn't (indiscernible).

24    Q     And I believe that was also in an earlier testimony  
25    that that process took place in December 2002; is that

1 right?

2 A December time frame sounds right.

3 Q And the market conditions are completely different back  
4 then, correct?

5 A Markets are always different. Yeah, they were  
6 different.

7 Q Did you consider what that sale would look like in  
8 today's market?

9 A I did not.

10 Q The reason you took the orderly wind down scenario  
11 takes five years is because in your view, that's the best  
12 way to maximize value of the assets, correct?

13 A I think extending the runway from six months, if it's  
14 six months to something like two years, you have to go to at  
15 least two years. Whether it's two years, three years, four  
16 years, five years. It's a bit of semantics, but I think the  
17 bulk of the activity, in my opinion, would be done in the  
18 first two to three years, but we have the estate loan for  
19 five years and you don't really wind down.

20 Q And if that's the best way to maximize value for  
21 creditors you're not suggesting that a Chapter 7 trustee  
22 wouldn't want to maximize value for creditors, are you?

23 A No, I'm not suggesting that.

24 Q You're not suggesting that such a Chapter 7 liquidation  
25 could move quarterly?

1 THE COURT: Move on. Let's go.

2 BY MR. NOSKOV:

3 Q Can we just flip back to the demonstrative again that  
4 we looked at at the beginning that -- it's debtor's  
5 demonstrative?

6 A Sure.

7 MS. BRIER: Can you clarify for the record which  
8 demonstrative?

9 MR. NOSKOV: Demonstrative one, I believe that you  
10 used. It's Page 6 of 6, docket 3697.

11 MS. BRIER: Got it.

12 MR. NOSKOV: It's the second page, but I think you  
13 used the first.

14 MS. BRIER: Got it.

15 BY MR. NOSKOV:

16 Q We've talked about the various inputs you considered  
17 and didn't consider in coming up with your total  
18 distributable value number here, correct?

19 A Yeah, we've talked a lot.

20 Q And the values, if we just -- just to recap for the  
21 NewCo is 3.352 billion in total distributable value?

22 A That's correct.

23 Q For the (indiscernible) orderly wind down, that's  
24 3.123, correct?

25 A Yes.

1 Q And for the liquidation, it's 2.716, correct?

2 A Correct.

3 Q Even with all of the assumptions that you made and I  
4 asked you about, correct, that's the difference between the  
5 three scenarios?

6 A Those are based on the assumptions we discussed.

7 Q And changes in those assumptions would move those  
8 numbers and swing them one way or the other under the  
9 different scenarios, correct?

10 A Yes.

11 MAN 1: Form.

12 THE COURT: Which part of moving ahead do you not  
13 understand?

14 MR. NOSKOV: I'm winding down, Your Honor. Just  
15 the last question.

16 BY MR. NOSKOV:

17 Q The liquidation scenario in terms of net liquid  
18 cryptocurrency that's distributed, the largest amount is  
19 under liquidation scenario, correct?

20 A Mathematically, yes, because it's not seeding another  
21 company with 450,000,000 of liquid crypto that then lands in  
22 their net distributable asset line, and it's not funding a  
23 litigation trust for 50 million, which may be another  
24 deficiency in the liquidation column is -- the first two  
25 columns have zero recovery for litigation. But we are

1 funding a \$50 million trust. We didn't want to guess, but I  
2 would say the best path to recovery on litigation proceeds  
3 is going to be under the NewCo and you were going to wind  
4 down public minor scenarios and not by a Chapter 7 trustee  
5 who's probably going to have a shorter timeline in mind.

6 Q With all those inputs, it's true that the liquidation  
7 scenario provides for a net liquid cryptocurrency  
8 distribution that's higher than the other two scenarios?

9 A Yeah. 2.444 is bigger than the other two numbers.

10 Q And the orderly wind down also provides more than the  
11 NewCo, despite having some of those features like the  
12 litigation trust funding and the seed capital for a new  
13 entity, correct?

14 A Again, it's all about seeding capital to NewCo, which  
15 should be dollar for dollar -- improve NewCo.

16 Q Thank you.

17 THE COURT: Redirect?

18 MS. BRIER: Yes, Your Honor.

19 REDIRECT EXAMINATION OF ROBERT CAMPAGNA

20 BY MS. BRIER:

21 Q Mr. Campagna --

22 THE COURT: Just make your appearance.

23 MS. BRIER: Grace Brier, Kirkland and Ellis  
24 on behalf of debtors.

25 BY MS. BRIER:

1 Q Mr. Campagna, to your knowledge, has Pharaohs ever  
2 offered a view on the value of NewCo?

3 A No.

4 MS. BRIER: And, Mr. Young, if you could put up  
5 that demonstrative we were just looking at, it's Page 6 of  
6 6. It's the second page of the Demonstrative exhibit. And  
7 zoom in on that recovery percentage number at the bottom,  
8 please. There.

9 BY MS. BRIER:

10 Q Mr. Campagna, what are the recovery percentage --  
11 percentages in each scenario here?

12 A 67 percent recovery under the NewCo path, 61.2 percent  
13 under the public minor/orderly wind down path, and 47.4  
14 percent under the liquidation path.

15 Q And based on your 25 years of experience in  
16 restructuring, can you provide some context as to the  
17 difference between those percentages in the NewCo and  
18 orderly wind down scenario versus the liquidation scenario?

19 A The fact that they're significantly higher. What else?  
20 You're looking for something else?

21 Q That's perfect. And were you ever presented with any  
22 adjustment based on a discount rate or anything else that  
23 would make an outcome determinative difference under the  
24 best interest test?

25 A No.

1 MS. BRIER: Thank you, Honor.

2 THE COURT: All right. And the committee rest?

3 MR. COLODNY: Yes.

4 THE COURT: Has the debtor rested?

5 MR. MCCARRICK: We have -- we have a couple of  
6 housekeeping matters.

7 THE COURT: Okay. In terms of witnesses, debtor,  
8 have any other witnesses?

9 MR. MCCARRICK: No other witnesses, Your Honor.  
10 T.J. McCarrick, for Kirkland & Ellis on behalf of the  
11 debtors.

12 MAN 1: Am I free?

13 MR. MCCARRICK: No other witnesses.

14 THE COURT: Yeah, I think you.

15 MAN 1: Thank you very much.

16 THE COURT: Why are you rushing off the state?

17 MR. MCCARRICK: We also have some housekeeping as  
18 well.

19 THE COURT: Okay. All right. So let's take up  
20 the housekeeping.

21 MR. MCCARRICK: Just following up on Your Honors  
22 guidance from yesterday, the Debtors intend to submit in the  
23 next 24 to 48 hours a list of exhibits that were admitted  
24 into evidence, at least in the Debtors case in chief. I  
25 assume the committee will take care of their own.

1 THE COURT: It would be nice to get one list. You  
2 actually can talk to each other and submit a combined list.

3 MR. MCCARRICK: We'd be glad to do that. We also  
4 intend to submit at that time a list of the docket numbers  
5 that we would ask Your Honor to take judicial notice of. I  
6 could read them into the record now, but I'm sure you don't  
7 be reading those numbers at you. It'll be everything that's  
8 referenced in the proposed confirmation order.

9 THE COURT: Okay. When I say okay, we'll see  
10 whether --

11 MR. MCCARRICK: Understood. You'll be able to  
12 determine whether or not you will take judicial notice, but  
13 I think that's all the Debtors have.

14 THE COURT: Okay.

15 MR. COLODNY: Your Honor, we have --

16 THE COURT: Mr. Colodny?

17 MR. COLODNY: Aaron Colodny, from White & Case, on  
18 behalf of the official committee of unsecured creditors.  
19 Court Reporter definitely --

20 THE COURT: Karen knows everybody.

21 MR. COLODNY: In our exhibit list, we have a  
22 number of YouTube clips of AMAs and other marketing material  
23 from Celsius. These were pulled from public Internet  
24 sources, and we would ask that Your Honor take judicial  
25 notice of them. I'm happy to read the different numbers.



1 We put them in our FTP site in two different ways. One was  
2 the full YouTube video, and the second was a clip of the  
3 part that's cited so that if people have --

4 THE COURT: They're going to want to spend the  
5 rest of their life watching YouTube videos, they can just  
6 watch the clips that you want to introduce?

7 MR. COLODNY: Correct. And so, we'd like to admit  
8 those into evidence, Your Honor. And I'm happy to read  
9 those.

10 THE COURT: It probably would be better if you  
11 submit it in writing and what it is, rather than reading  
12 them into the record now. How long a list is it?

13 MR. COLODNY: It is -- it's two ranges and one  
14 document in our exhibit list.

15 THE COURT: Have you conferred with other parties  
16 about whether anybody has any objections to them?

17 MR. COLODNY: I have not, Your Honor.

18 THE COURT: Okay. Mr. McCarrick, do you want to  
19 be heard?

20 MR. MCCARRICK: T.J. McCarrick, Kirkland & Ellis,  
21 on behalf of the debtors. I would note, Your Honor, that  
22 the objection deadline to the exhibits listed on the  
23 parties' respective exhibits list has passed. So to the  
24 extent Your Honor wanted to move these for admission, I  
25 think everyone missed their shot.

1 THE COURT: I'd like to have a written list. You  
2 can give it to me tomorrow morning, if that's convenient.

3 MR. COLODNY: Your Honor, if I could propose why  
4 don't we put these on the list we'll submit with the debtors  
5 --

6 THE COURT: That would be great.

7 MR. COLODNY: -- and we'll flag them for you or  
8 who wants to have them.

9 THE COURT: Okay. These -- there were no  
10 objections to any of these?

11 MR. COLODNY: There were no objections made.

12 THE COURT: All right.

13 MR. COLODNY: We'll flag that these ones have not  
14 been admitted into evidence --

15 THE COURT: Okay.

16 MR. COLODNY: -- and we'll submit reason for  
17 (indiscernible)

18 THE COURT: Okay. Any other housekeeping matters?

19 MR. COLODNY: I don't believe so, Your Honor.

20 THE COURT: Thank you. Mr. Koenig?

21 MR. KOENIG: Good afternoon, Your Honor. Chris  
22 Koenig, Kirkland & Ellis for the debtor. The only  
23 housekeeping matter I had was it seems like this is the end  
24 of the confirmation trial for this week. We do have an  
25 omnibus hearing tomorrow. We're scheduled to resume the

1 confirmation hearing the week of October the 16th with  
2 anybody's case opposing confirmation --

3 THE COURT: Right. And that they have a deadline  
4 for submitting direct testimony.

5 MR. KOENIG: Correct. And their exhibits that  
6 they would use during --

7 THE COURT: Right.

8 MR. KOENIG: -- that case. We wanted to  
9 understand what Your Honor was thinking as far as closing  
10 argument timing. If you wanted post-trial briefing. We  
11 obviously all submitted briefing in advance of the  
12 confirmation hearing. Frankly, I think that we could  
13 probably handle it during closing argument, but if Your  
14 Honor preferred post-trial briefing --

15 THE COURT: What I would like is proposed findings  
16 of fact, conclusions of law is what I would like. I don't  
17 think I need any more briefs. Let me put it this way. If  
18 there are issues that have either come up so far or in the  
19 remainder of the case come up and you wish to brief them,  
20 ask me when we get to the end, okay?

21 MR. KOENIG: Understood.

22 THE COURT: The briefs -- your brief, in  
23 particular, is quite comprehensive, let me put it that way.

24 MR. KOENIG: I think that's a compliment, Your  
25 Honor. I'm not sure, but --

1 THE COURT: It wasn't intended to be disparaged.  
2 It was very comprehensive.

3 MR. KOENIG: Okay. And so, Your Honor believes  
4 that we would have closing arguments whenever the objecting  
5 parties conclude their case in chief the week of the 16th,  
6 we would schedule closing argument.

7 THE COURT: We'll schedule closing argument. I  
8 usually -- in lengthier matters, I usually schedule closing  
9 arguments. Well, is anybody ordering a transcript?

10 MR. KOENIG: Is anybody ordering a transcript?

11 THE COURT: Transcript, yes.

12 MR. KOENIG: We've been ordering transcripts of  
13 the proceedings this week, yes.

14 THE COURT: Okay. So, you know, when the  
15 transcripts are completed, they'll be filed on the docket.  
16 And so, usually when I get your proposed findings of fact  
17 and conclusions of law, it ought to reference, you know,  
18 page numbers in the transcript. And if they're, you know, I  
19 haven't heard all the evidence yet. Obviously, the  
20 objectors have an opportunity to do that. So I'd want  
21 counter proposals, proposed findings and fact, conclusions  
22 law from them as well. I typically will schedule closing  
23 argument for probably no more than a week after all of  
24 that's done. So I, you know, I want to see the proposed  
25 finding conclusions and we'll be able to check them against

1 the transcripts and then we'll have closing argument.

2 MR. KOENIG: Great. So you would like --

3 THE COURT: But I have to put a caveat in all of  
4 this. The caveat is, I'm scheduled to start a trial on  
5 November 1st that I think is supposed to last 15 or 20 days.  
6 I don't -- it is -- it's a length, you know, it may not  
7 happen, but it's scheduled to happen. This isn't going to  
8 wait till the end of the trial, let's put it that way. I'm  
9 not going to wait until the end of the trial to hear  
10 argument in this. I just can't give you a date and time  
11 when we'll be scheduled.

12 MR. KOENIG: Understood. Is there a deadline that  
13 Your Honor --

14 THE COURT: Are you getting daily transcripts?  
15 What are you getting?

16 MR. KOENIG: We've been ordering the transcripts  
17 every day on whatever the maximum rush possible is.

18 THE COURT: Right. Okay.

19 MR. KOENIG: The -- so would -- does Your Honor  
20 have a deadline in mind for the parties, including the  
21 supporters and the objectors to submit findings of fact or  
22 conclusions of law, or would Your Honor like to take some  
23 time to consider that?

24 THE COURT: How quickly will you get ready to  
25 submit your proposed findings of fact?

1 MR. KOENIG: I think it'll depend on how lengthy  
2 the evidence is the week of October the 16th. If it's  
3 short, I imagine we'll be able to move quite quickly because  
4 we can use the week in the interim to work on --

5 THE COURT: Sure.

6 MR. KOENIG: -- the proposed findings back from  
7 the case that you heard this week.

8 THE COURT: That's fine. We'll take it up early.  
9 I think you'll have a better sense of it when you see what  
10 written direct is offered --

11 MR. KOENIG: Agreed.

12 THE COURT: -- in support of objections. Let me  
13 also raise a couple of things while we're talking about it.  
14 There are a number of open confirmation issues where I've  
15 been told the discussions are ongoing.

16 MR. KOENIG: For example, the ADR procedures?

17 THE COURT: Right. The ADR procedures, you know,  
18 I think the U.S. Trustee has indicated that there may be  
19 some additional discussions between the debtor and the U.S.  
20 Trustee with respect to some of the remaining issues. So I  
21 really do hope that you'll use the time off from trial. I  
22 know where you're going to be, but you're part of it. I say  
23 that because the NCBJ is meeting in Austin, Texas next week.  
24 And I know that Mr. Koenig is on one of the panels. I'm on  
25 a different panel, but I know he's on a panel. So unless

1 he's backed out, I think I know where he's going to.

2 MR. KOENIG: No, Your Honor.

3 THE COURT: Some of you may be there as well.

4 I'll see you there. So I hope you will continue, you know,  
5 I raised the issue about the consumer privacy ombudsman for  
6 one. I hope you'll be able to work that out.

7 MR. KOENIG: Understood, Your Honor.

8 THE COURT: None of that seemed insurmountable to  
9 me.

10 MR. KOENIG: No. We saw that she filed her  
11 proposed direct testimony the other day, so that --

12 THE COURT: She did not under oath, but she --

13 MR. KOENIG: -- should speed things along and we  
14 can do housekeeping there and make sure that --

15 THE COURT: I do want to -- I raised this issue  
16 during the hearing. I haven't decided at all, but I'm  
17 uncomfortable about approving releases when I don't know  
18 who's getting released. I've made that point. You may be  
19 able to convince me that I don't have to know that, but  
20 usually I do.

21 MR. KOENIG: Yeah. Your Honor, what I would say  
22 is the plan includes categories of released parties, which  
23 is very common in large Chapter 11 cases. If one of the  
24 things Your Honor is concerned about is one of the items in  
25 the releases are current employees as of a certain date --

1 THE COURT: Yeah.

2 MR. KOENIG: If that information --

3 THE COURT: Well you'll provide me with a list of  
4 the current employees.

5 MR. KOENIG: We would be more than happy to submit  
6 that list --

7 THE COURT: I think --

8 MR. KOENIG: -- if that helps give some comfort.

9 THE COURT: Well, it may give some comfort to the  
10 U.S. Trustee that's had objections to the releases. If they  
11 know who it is you're proposing to give releases to.

12 THE COURT: We would be happy to do that.

13 THE COURT: Okay. You know, some of the other  
14 categories may not quite lend themselves to that. I  
15 understand.

16 MR. KOENIG: Yes. We'll confer with the U.S.  
17 Trustee and see if there's some additional meat that we can  
18 put on the bones to make sure that the record is clear. And  
19 as you said, there are some categories that I think it will  
20 be difficult --

21 THE COURT: Sure.

22 MR. KOENIG: -- to do, but we will do what we can.  
23 We'll confer with the U.S. Trustee on that.

24 THE COURT: But, you know, from time to time I've  
25 seen some of this happens in bankruptcy court and some



1 happens in non-bankruptcy courts where people say, I got a  
2 release, but their name isn't anywhere near it. And then  
3 their issues, do they fit in a particular category, or not  
4 fit in a particular category --

5 MR. KOENIG: Understood.

6 THE COURT: -- and I'm trying to avoid as much  
7 uncertainty as possible. I'm not saying I'm approving the  
8 releases or disapproving the releases, but I just -- okay.  
9 Keep talking among yourselves and see --

10 MR. KOENIG: We certainly will. We'll use the  
11 time off.

12 THE COURT: All right. So I guess -- are you  
13 going to be here tomorrow?

14 MR. KOENIG: I plan on it, Your Honor.

15 THE COURT: I will be.

16 MR. KOENIG: All right. Let me just make sure  
17 that we don't have anything else housekeeping wise.

18 THE COURT: Go up to the microphone. Wait. Pull  
19 a microphone so you don't have to hobble over there.

20 MS. CORNELL: As of right now, the scheduling for  
21 tomorrow consists of the confirmation hearing continuing at  
22 9:00 and the omnibus starting at 10:00. Do you -- are you  
23 prepared to begin at 10:00 tomorrow for all matters?

24 THE COURT: Wouldn't that be nice?

25 MS. CORNELL: I just want to make sure that we're

1 prepared at the right time, sorry.

2 THE COURT: I don't see any reason to start at  
3 9:00 tomorrow, okay? We'll start at 10:00 tomorrow.

4 MS. CORNELL: Thank you.

5 MR. NOSKOV: Your Honor, Victor Noskov, Quinn  
6 Emanuel for Pharaohs. At the last hearing you asked me  
7 whether we would be submitting affirmative evidence --

8 THE COURT: I did.

9 MR. NOSKOV: -- in connection with our case, and I  
10 reserved on the question. I just want to say that, yes, we  
11 will. Just to the extent the court --

12 THE COURT: And, you know, and I read to you from  
13 the procedures order that I had entered, and shortly after  
14 that, one of my law clerks pointed out to me the schedule  
15 for submitting expert testimony, which was earlier than  
16 that, but I said on the record what deadline I was setting.  
17 So we'll follow that. So you're not out of time. Let's put  
18 it that way.

19 MR. NOSKOV: Thank you very much, Your Honor.

20 MR. MCCARRICK: T.J. McCarrick, Kirland & Ellis,  
21 on behalf of debtors. So long as we reserve the right to  
22 take a deposition or discovery from any expert that they  
23 might offer (indiscernible).

24 THE COURT: You can take depositions next week if  
25 you'd like to.

1 MR. MCCARRICK: Thank you.

2 MR. NOSKOV: Thank you, Your Honor.

3 THE COURT: How many witnesses do you expect to --

4 MR. NOSKOV: At this point, we expect just one.

5 THE COURT: One. All right. Anybody else have  
6 anything they want to raise for now?

7 MR. KIRSANOV: Your Honor, Dmitry Kirsanov, pro  
8 se.

9 THE COURT: Yes.

10 MR. KIRKSANOV: I would like to bring to the  
11 court's attention we have an update from the Ripple case.  
12 An appeals court yesterday rejected that CC's appeal.

13 THE COURT: No, actually, what happened is the  
14 District Court refused to certify it for immediate appeal.  
15 To have an immediate appeal is at least a two-step process.  
16 One, the District Court has to certify it, and then the  
17 Circuit has to decide whether to accept it. So I'm aware  
18 that the District Judge, Judge Torres, declined to certify  
19 it. She found that it was mixed questions of fact and law  
20 and therefore not entitled, so I'm aware of that, Mr.  
21 Kirsanov.

22 MR. KIRSANOV: Thank you, Your Honor.

23 THE COURT: Thank you. Anything else anybody has?  
24 See you at 10:00 tomorrow for some of you at lease.

25 MS. LAU: Hello?

1 THE COURT: Yes?

2 MS. LAU: Sorry. This is Cathy Lau. I think that  
3 you mentioned me yesterday. I don't know if you're  
4 referring to somebody else, but I was the one who submitted  
5 the objection, and you said that if I couldn't come, then,  
6 like, everyone has to vote to accept it, so I came, I guess.  
7 I put my -- I submitted my thing too late. So I guess  
8 nobody knew that I was here because I announced it at the  
9 start of the meeting.

10 MR. KOENIG: Your Honor, Chris Koenig, Kirkland &  
11 Ellis. And I'll try to jump in and see if I can help  
12 explain here. Here's what I think happened. Ms. Lau  
13 submitted to us a letter before the objection deadline. I  
14 don't believe it was ever filed on the docket. I don't know  
15 if you can hear me. And what we did in our confirmation  
16 brief and reply in support of objections we responded to Ms.  
17 Lau. We treated her as timely. We had -- your chambers  
18 reached out to us and said that letter was never actually  
19 docketed. Can we have a copy of it? We provided that copy  
20 to change --

21 THE COURT: I consider it to be timely. You've  
22 addressed it. And so, Ms. Lau, your objection is pending  
23 before the court.

24 MS. LAU: Thank you so much.

25 THE COURT: Okay. Thank you. And --

1 MS. LAU: Does that mean I get to do anything with  
2 it or --

3 THE COURT: Well, when we resume, anyone who is  
4 opposing confirmation of the plan has an opportunity to  
5 submit evidence or argument on it. So I should comment. I  
6 appreciate -- because look, there have been numerous  
7 letters, emails, all sorts of things, some of which may or  
8 may not be objections, but the debtor has cataloged them and  
9 treated them as objections, and the court will treat them as  
10 objections as well, so they won't be denied because they  
11 weren't filed on the docket by the deadline.

12 MS. LAU: Thank you so much.

13 MR. KOENIG: Thank you, Judge.

14 THE COURT: Thank you.

15 (Whereupon these proceedings were concluded at  
16 5:20 PM)

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing  
transcript is a true and accurate record of the proceedings.



Sonya Ledanski Hyde

Veritext Legal Solutions

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Date: October 6, 2023

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**Exhibit E**

**October 16, 2023 Transcript (Case in Chief in Opposition to Plan)**

*Includes (i) arguments of all presenting objecting creditors other than David Schneider and (ii) the testimony of (a) Otis Davis (pro se creditor) and (b) Richard Phillips (pro se creditor).*

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 22-10964-mg

4 - - - - - x

5 In the Matter of:

6

7 CELSIUS NETWORK LLC,

8

9 Debtor.

10 - - - - - x

11 United States Bankruptcy Court

12 One Bowling Green

13 New York, NY 10004

14

15 October 16, 2023

16 2:05 PM

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21 B E F O R E :

22 HON MARTIN GLENN

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: KAREN

1 HEARING re Hybrid Confirmation Hearing

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I N D E X

WITNESSES: DIRECT: CROSS: REDIRECT: RECROSS:

OTIS DAVIS

By Mr. McCarrick 58

By Mr. Kirsanov 91

By Mr. Frishberg 95

By Mr. Iovine 97

RICHARD PHILLIPS

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1 P R O C E E D I N G S

2 CLERK: Okay, good afternoon. Starting the  
3 recording for October 16th, 2023, two o'clock hearing.  
4 Calling Case No. 22-10964, Celsius Network LLC. For the  
5 parties, let's start with the parties in the courtroom. If  
6 anyone is speaking on the record, please come to the (audio  
7 glitch) appearance for the record.

8 Again, anyone in the courtroom so far? Oh.

9 MR. LATONA: Hi, good afternoon, Deanna. It's Dan  
10 Latona of Kirkland & Ellis. Today we'll have T.J. McCarrick  
11 and Grace Brier, among others for the Debtors.

12 CLERK: Okay, thank you. All right. Yes, Dimitry  
13 on Zoom.

14 MR. KIRSANOV: Good afternoon. Dimitry Kirsanov,  
15 pro se creditor. Thank you.

16 CLERK: Thank you. All right, any additional  
17 parties that are speaking on the record this morning --  
18 sorry, this afternoon, either in the courtroom or on Zoom?  
19 All right. I will pause the recording for now. Thank you.

20 (Pause)

21 CLERK: All right, good afternoon. For the  
22 parties in the courtroom, if anyone is speaking on (audio  
23 glitch) this afternoon and would like to state their  
24 appearance, please come to the middle podium to do so.

25 WOMAN: You're not making an appearance? But

1 Deanna's taking it for the recording.

2 CLERK: They could come back and give it, as long  
3 as -- yeah, go ahead.

4 MR. SABIN: Deanna. Deanna, hi, it's Jeff Sabin.  
5 I'm from Venable LLP for Ignat Tuganov. Thank you.

6 CLERK: Okay, thank you. For the parties on Zoom,  
7 if anyone is speaking on the record, please use the raise  
8 hand function. I will ask you to state your appearance.  
9 Mr. Schneider.

10 MR. SCHNEIDER: David Schneider, pro se creditor.

11 CLERK: Thank you. Mr. Bernstein.

12 MR. BERNSTEIN: Good afternoon. Just in case,  
13 Jeffery Bernstein, McElroy, Deutsch, Mulvaney & Carpenter  
14 for the New Jersey Bureau of Securities.

15 CLERK: Thank you. Mr. Phillips.

16 MR. PHILLIPS: Richard Phillips, pro se.

17 CLERK: Okay, thank you. All right, are there any  
18 additional parties at this time that are speaking on the  
19 record and have not put in their appearance? If not, I'll  
20 pause the recording for now. Okay.

21 (Pause)

22 CLERK: All right. Good afternoon. For the  
23 parties in the courtroom, if anyone is speaking on the  
24 record, please come to the middle podium and state your  
25 appearance.



1 WOMAN: Just give Deanna your appearance.

2 MR. COLODNY: For White & Case LLP on behalf of  
3 the Official Committee of Unsecured Creditors, Aaron  
4 Colodny, Keith Wofford, and Joshua Weedman.

5 CLERK: Okay, thank you. Are there any additional  
6 parties in the courtroom that have stated their appearance  
7 on the record? If so, please come to the middle podium to  
8 give your appearance.

9 MR. BRUH: Deanna, Mark Bruh for the United States  
10 Trustee.

11 CLERK: All right, thank you. Are there any  
12 parties on Zoom that have not stated their appearance for  
13 the record? If so, please use the raise hand function. Ms.  
14 Cornell?

15 MS. CORNELL: Morning. Shara Cornell for the  
16 Office of the United States Trustee. Thank you.

17 CLERK: Thank you. All right. Victor?

18 MR. UBIERNA DE LAS HERAS: Good morning, Deanna.  
19 Victor Ubierna de las Heras, pro se creditor.

20 CLERK: All right, thank you. All right, any  
21 additional parties in the courtroom or on Zoom?

22 All right. Again, for the parties that have  
23 joined, if anyone is speaking on the record this afternoon  
24 and has not given their appearance yet and would like to  
25 make their appearance, if you are on Zoom, please use the

1 raised hand function to do so. Mr. Davis.

2 MR. DAVIS: Otis Davis. I'm not sure I'll be  
3 speaking, but I just want to note my appearance. Pro se  
4 creditor.

5 CLERK: Thank you. All right, Jason?

6 MR. IOVINE: Yes, Jason Iovine, pro se creditor.  
7 I don't know if I'm going to speak, just notifying.

8 CLERK: Okay, thank you. All right, again, any  
9 additional parties that are speaking on the record this  
10 afternoon and have not given their appearance yet? All  
11 right, I'll pause the recording for now.

12 (Pause)

13 CLERK: All right. Again this after -- good  
14 afternoon. For the parties that are in the courtroom, if  
15 anyone is speaking on the record, please come to the middle  
16 --

17 MR. McCARRICK: T.J. McCarrick, Kirkland & Ellis.  
18 Oh, you already got it? Never mind.

19 WOMAN: Okay, you're going to have to  
20 (indiscernible) appearance. So you go to the podium  
21 (indiscernible). Right there. Yep.

22 MR. MAZA: Right now, I should make --

23 WOMAN: Yeah, she's on. Deanna, someone making an  
24 appearance. Go ahead.

25 MR. MAZA: Alan Maza from the SEC and I have on

1 Zoom also my colleagues Therese Scheuer and William  
2 Uptegrove.

3 CLERK: All right, thank you, sir. Are there any  
4 additional parties in the courtroom? This is the final call  
5 for appearances. All right. Are there any parties on Zoom  
6 that are speaking on the record this afternoon and have not  
7 stated their appearance yet? If so, please use the raise  
8 hand function in Zoom. Mr. Frishberg.

9 MR. FRISHBERG: Hi, Danial Frishberg, pro se. I  
10 don't plan on speaking (audio glitch).

11 CLERK: Okay, thank you. Johan.

12 MR. BRONGE: Yes, hello. Johan Bronge, pro se  
13 creditor, and I may speak.

14 CLERK: Okay, thank you. Yeah, Mr. Bernstein, did  
15 you have a question?

16 MR. BERNSTEIN: No, sorry --

17 CLERK: Okay.

18 All right, are we waiting for any additional  
19 parties or can we start promptly at two?

20 MR. COLODNY: Hi, Deanna. This is Aaron Colodny  
21 from White & Case. I believe we are ready to begin.

22 CLERK: All right, thank you.

23 All right, if everyone could please pay attention  
24 to the following announcement. All persons are strictly  
25 prohibited from making any recording of Court proceedings,

1 whether by video, audio, screenshot, or otherwise.

2 Violation of this prohibition may result in the imposition  
3 of monetary and nonmonetary sanctions. The clerk of the  
4 court maintains an audio recording of all proceedings which  
5 constitutes the official record.

6 Parties must state their name each time they speak  
7 on the Court record. Party must join with the full first  
8 and last name to be admitted from the waiting room. Parties  
9 that join with initials, a partial name, a designation such  
10 as iPhone, et cetera, will not be admitted. Also the phone  
11 number that you sign up for your e-Court appearance needs to  
12 be the same number that you use to log in.

13 Also, please keep in mind that you should mute all  
14 your cell phone and devices so they do not interfere with  
15 the recording. Thank you.

16 MR. ABREU: Sorry Deanna, can you hear me?

17 CLERK: Yes, Mr. Abreu.

18 MR. ABREU: Just to state that I might speak as  
19 well.

20 CLERK: Okay.

21 MR. ABREU: Pro se creditor.

22 CLERK: Okay, Artur Abreu, your appearance is  
23 noted. Thank you.

24 CLERK: All rise.

25 THE COURT: All right, please be seated. Good

1 afternoon, everyone. I'm sure you all had busy weeks even  
2 though we weren't in the courtroom last week. Let me just  
3 cover just a few preliminaries. So we're going to pick up,  
4 I know for sure, with the objections today.

5 I inadvertently -- so there was an order that was  
6 entered on October 13th and had the list, the order in which  
7 I would hear objectors. I inadvertently omitted Dmitry  
8 Kirsanov, and I think it was because he had actually filed  
9 the objection before and I hadn't seen it. So I'm going to  
10 include him after number six, Koala 2 LLC. We'll give Mr.  
11 Kirsanov an opportunity to speak then.

12 So I also am aware that the Committee has  
13 objected to the new proposed expert report and this really  
14 goes -- I know there are also objections to some of the pro  
15 se creditors as well. I'm going to reserve ruling on  
16 whether or not the proposed expert report is or is not  
17 admissible. I'm going to hear, and this is really going to  
18 go with respect to some of the pro se creditors who are  
19 going to speak as well.

20 If you have an objection, you should assert it,  
21 but I will listen to the testimony and will decide after  
22 whether or not to sustain objections or not. But I'm going  
23 to give people an opportunity to have their say. Okay?

24 So with that, let me ask first from the Debtor,  
25 anything that I need to cover preliminarily before we get

1 started?

2 MR. McCARRICK: Thank you, Your Honor. T.J.  
3 McCarrick, Kirkland & Ellis, on behalf of the Debtors. Just  
4 as a process point, we understand Your Honor entered the  
5 October 13th order identifying the order in which you would  
6 hear argument and testimony, depending upon whether or not  
7 folks submitted testimony.

8 The only -- it's a wee proposal that I would  
9 offer for Your Honor's consideration, is whether it would  
10 make sense to have the folks who are going to be giving a  
11 statement but not evidence or testimony go sequentially and  
12 then pick up with the evidence. I'm happy to do it anyway  
13 Your Honor --

14 THE COURT: Mr. McCarrick, at this stage, I don't  
15 have clearly in mind --

16 MR. McCARRICK: That's perfectly fine.

17 THE COURT: I thought it would -- it was going to  
18 be easier if I had an order, so we don't have five people  
19 trying to interject at the same time, not there was anything  
20 wrong with it, but it's just difficult with (audio glitch)  
21 on Zoom. Okay. And the other thing I raise is about remote  
22 testimony and I tried to make clear the Federal Rules, Rule  
23 43(a) has a rule that essentially requires compelling  
24 circumstances in order for me to permit remote testimony.

25 The case law is not particularly well developed on

1 this area. As I understand it, where no objections have  
2 been raised to remote testimony, Courts have more often than  
3 not permitted the remote testimony. I think, you know, for  
4 example, where there are pro se creditors outside the United  
5 States or in California, I'll leave it to the U.S. Trustee,  
6 the Committee, and the Debtors to see whether there are  
7 objections to that person testifying remotely or not.

8 Obviously, there'll be cross examination by Zoom.  
9 But Rule 43(a) creates a pretty strong presumption that the  
10 testimony is supposed to be in the courtroom. Until  
11 September 21st, the Bankruptcy Courts had much greater  
12 flexibility about it. After the judicial conference imposed  
13 new limitations on remote hearings, it got a little -- it  
14 got tighter.

15 So I'm not telling anybody whether to object,  
16 don't object, or whatever. I think, you know, we don't have  
17 juries. Frankly, I think the remote testimony for the most  
18 part has gone pretty well, but we'll deal with it as the  
19 individuals arise.

20 So as much -- we came up with the order because I  
21 just wanted people to know you're next online, you're next  
22 online.

23 MR. McCARRICK: Understood, Your Honor, and we're  
24 happy to proceed that way.

25 THE COURT: Okay. Thanks very much, Mr.

1 McCarrick. All right, anything from the Committee before we  
2 start?

3 MR. COLODNY: No, Your Honor.

4 THE COURT: Okay. All right --

5 MR. KIRSANOV: Your Honor, (audio glitch), pro se  
6 creditor.

7 THE COURT: Yes.

8 MR. KIRSANOV: I wasn't aware that I would be  
9 number six today. May I ask the Court --

10 THE COURT: You're going to be number seven today,  
11 Mr. Kirsanov.

12 MR. KIRSANOV: I understand. Thank you, Your  
13 Honor. May I ask permission to go last on the list, so  
14 prepare?

15 THE COURT: All right, so right now, I will do  
16 that. I didn't want you to feel that somehow you've been  
17 slighted and not put on the list and it was my oversight  
18 that kept you from going on. With your permission, you'll  
19 be number 23 after Cathy Lau.

20 MR. KIRSANOV: Thank you --

21 THE COURT: Is that all right?

22 MR. KIRSANOV: Yes, thank you.

23 THE COURT: Okay. I slotted you up because I  
24 didn't -- you've spoken before. I didn't want you to feel  
25 that I'd left you off and then didn't consider you.



1 MR. KIRSANOV: I appreciate that sincerely, Your  
2 Honor. Thank you.

3 THE COURT: All right. So you're going to be on  
4 the list for number 23. All right?

5 So let's start with the U.S. Trustee. Mr. Bruh?

6 MR. BRUH: Thank you, Your Honor. For the record,  
7 Mark Bruh for the United States Trustee. We will not be  
8 presenting, Your Honor, so that will be quick.

9 THE COURT: Okay.

10 MR. BRUH: We'll just reserve for closing in the  
11 case.

12 THE COURT: Well, let me ask you. I asked the  
13 Debtor, the Committee, and the U.S. Trustee to confer about  
14 the Consumer Privacy ombudsman and is -- has there been a  
15 resolution reached on that? I see Ms. Cornell shaking her  
16 head, but somebody tell me where we stand on that because  
17 she's not on the list.

18 MR. KOENIG: Good afternoon, Your Honor. Chris  
19 Koenig, Kirkland & Ellis, for the Debtors. We've been in  
20 conversations with her. We're very close on a resolution of  
21 language that would go in a confirmation order. I don't  
22 know whether she intends to testify or not. If we reach a  
23 resolution, maybe her testimony is no longer needed. We've  
24 discussed it with her.

25 THE COURT: Okay. And I guess the point, first

1 off, she's not lawyer, I take it. Her statement wasn't  
2 under oath.

3 MR. KOENIG: Right.

4 THE COURT: I went out of my way and this last  
5 thing is to put what the two subsections of 1746 are about  
6 what it has to say. Hopefully, you'll be able to work out a  
7 resolution. If she wishes to put the testimony in, point  
8 out to her the affirmation that it has to have.

9 MR. KOENIG: We have.

10 THE COURT: And it may be that you're not going to  
11 want -- if you reached a resolution her testimony  
12 (indiscernible) but there won't be cross examination.

13 MR. KOENIG: Yes.

14 THE COURT: Okay. The argument --

15 MS. CORNELL: Your Honor --

16 THE COURT: Just a second. The arguments for her  
17 not having to come up from Washington are weaker than  
18 somebody who's out of the country. Go ahead, Ms. Cornell.

19 MS. CORNELL: Your Honor, Shara Cornell again for  
20 the Office of the United States Trustee. I just wanted to  
21 clarify for the record that Ms. Thompson is, in fact, an  
22 attorney.

23 THE COURT: She is. Well --

24 MS. CORNELL: Yes, sir.

25 THE COURT: Then she ought to know what you have

1 to do to say something under oath, but in any event. See if  
2 you can work it out. It may be that she doesn't care about  
3 the testimony going in, if you've reached a resolution.  
4 Leave that to you to work out.

5 MR. KOENIG: Right. I don't want to speak for  
6 her. I suspect that that will likely be the case, but we'll  
7 continue --

8 THE COURT: All right.

9 MR. KOENIG: -- with her.

10 THE COURT: That's fine.

11 MR. KOENIG: Thanks, Your Honor.

12 THE COURT: Okay. All right. The SEC. Anybody  
13 from the SEC wish to make a statement? I think they had a  
14 reservation of rights. Is anybody from the SEC on Zoom?

15 MS. SCHEUER: Yes, good afternoon, Your Honor.  
16 Therese Scheuer for the U.S. Securities and Exchange  
17 Commission.

18 THE COURT: Yes.

19 MS. SCHEUER: With me on the line is William  
20 Uptegrove and in the courtroom is Alan Maza from the U.S.  
21 Securities and Exchange Commission.

22 THE COURT: Okay.

23 MS. SCHEUER: Your Honor, the SEC filed a limited  
24 objection and a reservation of rights at Docket 3522. Based  
25 on representations by Debtors' counsel, I anticipate the

1 Debtors will incorporate changes to respond to the issues  
2 raised in our informal comments and limited objections, and  
3 we're review any proposed modifications.

4 Your Honor, the SEC does not have an evidentiary  
5 presentation for today, but if Your Honor will permit, I  
6 would like to clarify a few points for the record.

7 THE COURT: Please go ahead.

8 MS. SCHEUER: Thank you, Your Honor. Certain  
9 statements have been made about the SEC's District Court  
10 action and our position in the case during the course of  
11 these hearings, as including in Mr. Davis' filed statement  
12 at Docket 3769, and similar statements may be made again.

13 Your Honor, regarding the District Court action,  
14 we would respectfully refer the Court to the SEC complaint  
15 for an accurate statement of the SEC's position in that  
16 case, which was filed at Docket 3293. In addition, I wanted  
17 to clarify for the record that we're not asking for this  
18 Court to rule on whether CEL and Earn are securities, as  
19 that is an issue for the District Court, nor are we taking  
20 any position as to whether any claim should be subordinated.

21 Your Honor, determining the priority of these  
22 claims may turn on whether these programs are debt or equity  
23 instruments and not necessarily on whether they're  
24 securities. To the extent the Court may have to make  
25 certain findings about whether something is a security, we'd

1 reiterate our request that such a ruling be limited to the  
2 bankruptcy case and without conclusive effect on the SEC  
3 outside of this case.

4 I'm happy to walk the Court through the factual  
5 allegations about CEL and Earn and the commission's  
6 complaint if that would be helpful to Your Honor.

7 THE COURT: I -- what I'm going to say now, I've  
8 said on the record before and that is -- and while I've  
9 certainly reached no final conclusion about it, it seemed to  
10 me that it was unlikely that I would have to decide the  
11 issue of whether either the Earn or the CEL token was a  
12 security in the case of Celsius. What the Court is faced  
13 with is a proposed plan which, with a couple of exceptions,  
14 has been overwhelmingly accepted by classes that proposes  
15 plan treatment for the CEL token and obviously for Earn  
16 account holders.

17 The issue may well be, then, whether dissenting  
18 members of accepting classes are receiving at least as much  
19 as they would in a Chapter 7 liquidation. If they are, it  
20 seemed likely to the Court that the plan could be confirmed.  
21 May be other objections the Court has to deal with, and the  
22 Court would be able to do that without having to take a  
23 position on whether either Earn or the CEL token was a  
24 security.

25 From the Court's standpoint, I usually try not to

1 decide more than I have to decide. And so, it seemed to me  
2 -- I'm not foreclosing entirely the possibility, but it did  
3 not seem to me that the issues for confirmation in this case  
4 were going to require the Court to reach that determination.  
5 Obviously, if I did, it's not binding on any District Court  
6 or any, you know, or any other Court.

7 So, I mean that -- you know, you're -- the SEC is  
8 free to take whatever position it's going to take elsewhere  
9 or in this Court. But that's -- I've said this. You were  
10 that prior hearing we had. Not everybody was a party to  
11 that -- that that was the Court's thinking. We'll see.  
12 Okay? I don't know what to say more than that. I can't  
13 give you more comfort than that.

14 I understand the SEC's position. I know these are  
15 difficult issues. I commented before that I think Judge  
16 Torres and Judge Rakoff have somewhat different views of the  
17 analysis and conclusions. Obviously, they had two different  
18 cases. But I'm aware of that and I don't -- I'm not looking  
19 for the opportunity to jump into the fray of the differences  
20 between those two judges and maybe others. Okay?

21 MS. SCHEUER: Thank you, Your Honor.

22 THE COURT: I think with respect -- again and  
23 understand, I'm not asking you to waive whatever limited  
24 objections you have. I'll make no secret of it. I was  
25 quite concerned with the events during the Voyager case with

1 respect to what certainly appeared to me to be late  
2 objections by securities regulators. It torpedoed one  
3 confirmed plan. I think throughout this case, I have  
4 encouraged the Debtors and the Committee multiple times to  
5 make sure they were conferring with the regulators, state  
6 and federal securities regulators, CFTC, et cetera.

7 I think -- obviously, I was not privy to those  
8 conversations, but there were from time to time reports that  
9 those were ongoing and I was glad to hear that. Obviously,  
10 the plan structure in Celsius is not the same as it was in  
11 Voyager. I think that that doesn't -- you know, still -- if  
12 the plan is confirmed, which is far from being the case at  
13 this point, the plan sponsor would still have to get SEC  
14 approval and registration for what they're attempting and  
15 I'm not -- that's not today -- that's not the issue for the  
16 Court at this point.

17 I don't know whether that -- so yes, I've been  
18 quite sensitive to the issues of the regulators. They've  
19 been important throughout this case and to the extent that  
20 their views could be taken into account and orders adjusted  
21 accordingly to avoid those issues, that's helpful. Anything  
22 else you wish to add?

23 MS. SCHEUER: No. Thank you, Your Honor.

24 THE COURT: All right. Okay. The New Jersey  
25 Bureau of Securities.

1 MR. BERNSTEIN: Good afternoon, Your Honor.  
2 Jeffrey Bernstein, McElroy, Deutsch, Mulvaney & Carpenter  
3 for the New Jersey Bureau of Securities.

4 THE COURT: Nice to see you, Mr. Bernstein.

5 MR. BERNSTEIN: Thank you, Your Honor. Your  
6 Honor, the New Jersey Bureau of Securities filed a  
7 reservation of rights at Docket 3524 and that was prior to  
8 the Debtor filing at Docket 3526 a resolution of plan  
9 language with the state. Accordingly, I had notified the  
10 Debtor earlier today that we no longer intended to make any  
11 presentation to the Court today on any issues. Thank you.

12 THE COURT: Thank you, Mr. Bernstein.

13 MR. BERNSTEIN: Good day.

14 THE COURT: Core Scientific and Core Scientific  
15 Operating Company.

16 MR. KOENIG: Your Honor, again for the record,  
17 Chris Koenig for Celsius. Their reservation of rights was  
18 --

19 THE COURT: That was the thing that was resolved?

20 MR. KOENIG: To the extent their settlement was  
21 not approved, their settlement was approved. I'm not  
22 surprised that they're not here today.

23 THE COURT: Okay. All right. Next is 168 Trading  
24 Limited. Is there anyone appearing for 168 Trading Limited?

25 MR. KOENIG: Your Honor, it's Chris Koenig. I'm



1 informed by my colleagues that they actually asked if they  
2 could go at the conclusion. We're close on language and --

3 THE COURT: All right.

4 MR. KOENIG: -- that was a request that they --

5 THE COURT: I will --

6 MR. KOENIG: -- earlier.

7 THE COURT: The conclusion today or the conclusion  
8 --

9 MS. BRIER: They just said last.

10 MR. KOENIG: Perhaps this is --

11 THE COURT: Ms. Nathanson? You're in mute.

12 MS. NATHANSON: Apologies, Your Honor. I'm the  
13 next -- counsel for the next objector, so we're not quite up  
14 to me.

15 THE COURT: You're for Koala or --

16 MS. NATHANSON: Yes.

17 THE COURT: All right. Okay. So I will move --  
18 remind me to call -- I don't know where we're going to get  
19 to today. Okay?

20 MR. KOENIG: And we'll email that as well.

21 THE COURT: Okay. Remind me to call them again at  
22 the end of today, and if it's not today, we'll see where we  
23 are. Okay.

24 MR. KOENIG: Thank you.

25 THE COURT: All right. Ms. Nathanson, Koala 2

1 LLC.

2 MS. NATHANSON: Thank you, Your Honor. Leigh  
3 Nathanson from King & Spalding for Koala 2 LLC. We too had  
4 filed a limited objection. This was based on Koala 2's  
5 inclusion on the proposed list of equitably subordinated  
6 entities. The Debtor subsequently filed some revisions to  
7 the plan language that were designed to address our  
8 objection, which was essentially to the effect that the plan  
9 did not provide clearly for what would happen to a party  
10 that was proposed to be equitably subordinated, but for  
11 which the Court ultimately denied that subordination  
12 proceeding, should that occur.

13 So the changes that the Debtors have proposed  
14 resolve Koala 2's limited objection, but I did just want to  
15 note for the record that this objection and Koala 2's  
16 inclusion on the proposed equitable subordination list are  
17 based on a factual inaccuracy that Koala 2 is an entity that  
18 is controlled by Alex Mashinsky. It is not.

19 We've discussed with the Kirkland team that fact  
20 and expect that given the stay of the equitable  
21 subordination proceeding, we will have discussions with them  
22 and either deal with that at the subordination proceeding or  
23 potentially agree to some resolution beforehand. But I just  
24 wanted to note for the record that fact.

25 THE COURT: All right. Thank you very much, Ms.

1 Nathanson. All right. Mr. Bronge, can you hear me?

2 MR. BRONGE: Yes, hello? Can you hear me?

3 THE COURT: Yes, I can.

4 MR. BRONGE: Yes. Good afternoon, I suppose it is  
5 in New York. So --

6 THE COURT: It is.

7 MR. BRONGE: I, obviously, I'm a pro se and I'm  
8 not a hundred percent sure what I'm supposed to do at this  
9 stage, but I would like to bring up a couple of issues. One  
10 is that I requested for the witness Oren Blonstein and I  
11 have not heard anything about that. So, I don't know if  
12 that's going to show up or not because I also saw that the  
13 Debtor have objected to it.

14 THE COURT: Well, let me see. One of the Debtors'  
15 lawyers has approached the podium, and let me have her  
16 identify herself and we'll see what happens.

17 MS. BRIER: Good afternoon, Your Honor. Grace  
18 Brier, Kirkland & Ellis on behalf of Debtors. Your Honor,  
19 Mr. Bronge requested Mr. Blonstein's testimony as part of  
20 his exhibit list and witness list. Mr. Blonstein's a  
21 Celsius employee. He's the chief compliance officer there.

22 We filed an objection to his testimony, a motion  
23 in limine, on October 13th. It's Docket No. 3802. For the  
24 reasons that we list in there, we anticipate based on Mr.  
25 Bronge's objection, that it will be questioning that is

1 duplicative of questioning he already posed to Mr. Ferraro  
2 who was here last week or two weeks ago and offered  
3 testimony in response to Mr. Bronge's questions.

4 Mr. Bronge responded and said that he does not  
5 anticipate they will be duplicative and we filed our motion.  
6 We think that if he's going to ask questions entirely  
7 duplicative of Mr. Ferraro's questioning, it would be  
8 duplicative and unnecessary. And to the extent he can  
9 proffer or allege that he --

10 THE COURT: Let's schedule Mr. Blonstein's  
11 testimony, and I will not permit duplicative testimony on  
12 it.

13 MS. BRIER: Thank you, Your Honor.

14 THE COURT: You'll be able to do it. So Mr.  
15 Bronge, you'll get your deposition, but it can't cover what  
16 Mr. Ferraro testified about.

17 MS. BRIER: And Your Honor, my understanding is  
18 he's seeking testimony in Court from Mr. Blonstein. We have  
19 reached out to Mr. Blonstein. He's based in California.  
20 We'd request that he can testify remotely as we understand  
21 it Mr. Bronge will be questioning remotely and he's, you  
22 know, a few hours away at this point for a few questions, it  
23 sounds like Mr. Bronge has.

24 THE COURT: Here's my suggestion. Well, here's my  
25 order. Arrange his deposition. He's out of -- he's in

1 California. He's out of the subpoena range of the Court to  
2 compel him to come to Court to testify. Let Mr. Bronge take  
3 the deposition remotely and if there are non-duplicative  
4 testimony questions and answers, he'll -- Mr. Bronge will be  
5 able to introduce them here.

6 MS. BRIER: Understood.

7 THE COURT: So we won't have to have Mr. Blonstein  
8 travel to New York and Mr. Bronge will get to ask his  
9 questions.

10 MS. BRIER: Understood. Thank you, Your Honor.

11 THE COURT: Okay? And hopefully you can arrange  
12 that within the next day or so.

13 MS. BRIER: We'll do what we can, Your Honor.

14 THE COURT: Mr. Bronge, does that work for you?

15 MR. BRONGE: Yeah, that sounds adequate. So, I  
16 will not have duplicative questions. There might be one or  
17 two in that area but they mainly a different focus.

18 THE COURT: All right. So Ms. Brier will be in  
19 touch with you and arrange for the deposition of Mr.  
20 Blonstein for non-duplicative questions and then you'll get  
21 a transcript quickly prepared and whatever comes in will  
22 come in. Okay? Is there anything else you wanted to raise,  
23 Mr. Bronge?

24 MR. BRONGE: Yes. It has to do with the similar  
25 objection that the Debtor had to the exhibit list I want to

1 have introduced. They objected to that as well, to all my  
2 exhibits. I don't understand why, and I do -- I would like  
3 the Court to allow them.

4 THE COURT: Ms. Brier, do you want to address the  
5 issue of the exhibits that Mr. Bronge has offered?

6 MS. BRIER: Yes, Your Honor. We filed objections  
7 to and responses to the exhibits that Mr. Bronge included on  
8 his exhibit list.

9 THE COURT: Right.

10 MS. BRIER: Largely, our objections were that they  
11 were more appropriately judicially noticed and entered into  
12 evidence. A lot of them are docket filings. I'm happy to  
13 walk through each of them. I think there are 11, but it's  
14 on Docket No. 3810.

15 THE COURT: All right. Just give me a second.

16 MR. BRONGE: I did early this morning file an  
17 extended, an updated list as well. Obviously, I'm not 100  
18 percent familiar what the difference is to have the document  
19 in evidence or as a judicial notice.

20 THE COURT: I'm a little bit at a loss. Are there  
21 --

22 MS. BRIER: Your Honor, do you want -- would you  
23 like us to pull up our objections to the --

24 THE COURT: Yeah, could you?

25 MS. BRIER: Absolutely. So this is Docket No.

1 3810. If someone could please get that to our helpful trial  
2 tech, we would love to be able to show that to the Court.

3 CLERK: Excuse me, who am I making a cohost, if  
4 I'm -- is it -- who's screen sharing?

5 MR. LOPEZ: Jose Lopez.

6 MS. BRIER: Jose Lopez, please.

7 CLERK: Okay, he is a cohost.

8 MS. BRIER: Thank you. And actually -- thank you.

9 And if you --

10 THE COURT: Just give me a minute.

11 MS. BRIER: Of course.

12 THE COURT: I'm trying to put them up on my other  
13 computer as well.

14 MS. BRIER: Excellent.

15 THE COURT: Sorry for the delay.

16 MS. BRIER: No problem.

17 THE COURT: All right. So I have 3810 open on my  
18 own computer rather than just on the -- on what's on the  
19 screen.

20 MS. BRIER: Excellent.

21 THE COURT: I'm looking at Mr. Bronge --

22 MS. BRIER: Perfect.

23 THE COURT: -- his exhibit offer.

24 MS. BRIER: All right, so I'm looking at Page 3,  
25 starting with Johan Bronge's first exhibit, Mashinsky

1 declaration. We could pull that -- yeah.

2 THE COURT: Mashinsky declaration?

3 MS. BRIER: Yes. Your Honor, we have no objection  
4 to the admission of the Terms of Use that were attached to  
5 Mashinsky's declaration and in fact, they are already in  
6 evidence as Debtors' Exhibit 38. He seeks to admit the  
7 entire filing. We just objected to the admission of the  
8 declaration itself, which just describes the contents behind  
9 it. But to the extent he intends to use anything in that,  
10 we're happy to discuss it. If he just is using the Terms of  
11 Use, already in evidence as Exhibit 38.

12 THE COURT: Well --

13 MR. BRONGE: Yeah, can -- so I do intend to use  
14 certain parts in the preceding pages as they are relevant to  
15 my arguments and to the whole Terms of Use, especially  
16 because of the different version of the Terms of Use are  
17 described when they were valid and certain other statements  
18 in the beginning that are important as well.

19 THE COURT: I'm overruling the objection and the  
20 Mashinsky declaration is an admission and it comes into  
21 evidence.

22 MS. BRIER: Let me see. Exhibits 2 -- I don't  
23 know if it's easier to do this by category or by each  
24 exhibit. I'm happy to --

25 THE COURT: Well, you can tell me by category and



1 then we'll see if we have to go through by exhibits.

2 MS. BRIER: Understood. Exhibits 2, 5, 6, 7, 8,  
3 9, 10, and 11, it's our position that they are more  
4 appropriately judicially noticed than entered into evidence,  
5 as many of them are filings or complaints or legal arguments  
6 as opposed to evidence that would be admissible.

7 MR. BRONGE: Okay, can I comment on that?

8 THE COURT: Go ahead.

9 MR. BRONGE: Yeah. First of all, I would  
10 appreciate if you can explain the difference between the  
11 document being in evidence and subject to judicial notice  
12 from a legal standpoint.

13 THE COURT: I'm going to sustain the objection.  
14 I'll consider it as judicial notice, so that's Exhibits 2 --  
15 Ms. Brier, which were the other ones?

16 MS. BRIER: 2, 5, 6, 7, 8, 9, 10, and 11.

17 THE COURT: What about Exhibit 3?

18 MS. BRIER: So three is, I think a category  
19 slightly separate from the others that we -- has a slight  
20 caveat. The others, I think, all fall within the category  
21 of judicial notice.

22 MR. BRONGE: So if I, I still would like to  
23 understand the difference between judicial notice and to the  
24 document being in evidence. Can the Debtor explain that?  
25 The reason is that in the Exhibit 3 as well, there is

1 statements and legal conclusions regarding securities that I  
2 would like to have --

3 THE COURT: Mr. Bronge --

4 MR. BRONGE: -- able to argue from. Yes?

5 THE COURT: Mr. Bronge.

6 MR. BRONGE: Yes.

7 THE COURT: It was largely without admission, or  
8 without admitting or denying, so this is not -- it may be  
9 that that was the resolution of the DOJ, you know, for DOJ  
10 non-prosecution agreement for an SEC complaint, but there  
11 are only portions of it which are actually binding on the  
12 Debtor. So I'll take judicial notice of them but they're  
13 not properly in evidence as admissions.

14 MS. BRIER: Yes, Your Honor, and part of that  
15 document is in, depending on what he asks about. We're  
16 happy to object to that as well, but that was our position.

17 THE COURT: Okay.

18 MR. BRONGE: May I use those references for argue  
19 --

20 THE COURT: Well, you can try. We'll see how --  
21 we'll have to see as we go along.

22 MR. BRONGE: Okay.

23 THE COURT: I'm just making some notes here.

24 Does that deal with all of Mr. Bronge's --

25 MS. BRIER: That deals with all of his evidentiary

1 -- proposed exhibits, to the extent he offers any evidence  
2 at this time. I don't understand. He submitted a  
3 declaration but reserved the right to cross examine on  
4 anything he submits at this time.

5 THE COURT: All right. Go ahead, Mr. Bronge.

6 MS. BRIER: Thank you, Your Honor.

7 MR. BRONGE: Okay. So I understand that this is  
8 not the time to do a proper argument. Is that correct?

9 THE COURT: You can make your argument now, sure.

10 MR. BRONGE: Okay. So I have two lines of  
11 argument that I want to pursue going forward and I also  
12 reserve to have another go at this at the late -- later,  
13 more appropriate state. But what I shortly trying to argue  
14 is the ownership of the collateral and I base that on my  
15 first loan, primarily. And let me see if I can give you the  
16 docket number of that.

17 My -- let me see here, where it is. So I have  
18 filed an objection and I also filed a motion regarding the  
19 collateral ownership. My first loan is governed by the  
20 Terms of Service No. 7, the loan agreement number seven,  
21 which I think unambiguously states that there is no legal  
22 title transfer on collateral. Therefore, I think that the  
23 collateral ownership of that loan particularly should be  
24 that the legal title reside with me and it is not part of  
25 the bankruptcy estate.

1 And I also argue that the same applies for my  
2 other loans that are governed by Terms of Service No. 9.  
3 The basic only thing that has changed in that -- in the No.  
4 9 from No. 7 is one sentence that has been added that  
5 collateral is exclusive property of Celsius.

6 Now, I argue that when you look at the Terms of  
7 Service, the intention of a collateralized loan agreement is  
8 not to transfer title and should there be a transfer of  
9 legal title involved, it should be explicitly state so, not  
10 just a cursory one sentence or not even one sentence in one  
11 paragraph, while all other paragraphs referring to the  
12 collateral as the borrowers or it's even so in the  
13 definition.

14 Additionally, in the terms, General Terms of  
15 Service and the Risk Disclosure, it also specifically state  
16 that the borrower's risk is not being able to fulfill the  
17 loan obligation. And that is when the collateral is at  
18 risk. And that is very different from what it states when  
19 it comes to the Earn accounts. So I will obviously have a  
20 better prepared speech when I come to argument because I  
21 thought this was not the time to do this.

22 The other line of -- that I will follow is Earn  
23 subordination. Several governmental entities have rulings  
24 saying Earn is a security and securities would be  
25 subordinated in Chapter 11. Especially this plan, I would

1 receive a significantly better recovery under Chapter 7  
2 where Earn would be subordinated. That also was admitted by  
3 the expert Mr. (audio glitch) in the last hearing.

4 So finally, the last thing I want to argue is that  
5 the valuation of the collateral is unfair and incorrect.  
6 There has been a lot of discussion regarding CEL token  
7 valuation where there has been witnesses and arguments that  
8 there has been manipulated market in relation to the price  
9 of CEL, and that should preclude the use of the petition  
10 price. Now, this turns out that the same is -- seems to be  
11 true with Bitcoin as it was heavily shorted by FTX during  
12 the time of the bankruptcy of Celsius.

13 That's one thing, but the proposed plan had  
14 different pricing of Bitcoin. I specifically refer to  
15 Bitcoin collateral, but it's true even for other collateral  
16 because the Debtor suggests to use petition price when  
17 valuing the collateral, but when you give back collateral  
18 after dollarizing, you use market prices.

19 Now, obviously, when you have the petition price  
20 done at the bottom of a bear market, it's very likely that  
21 the market price when the actual repurchase of the remaining  
22 collateral value in Bitcoin will significantly reduce the  
23 amount of Bitcoin you get back, which is unfair. So my  
24 argument is that the valuation should be, one, so either you  
25 use market prices all the time or you use petition prices

1 all the time. And I think the fairest thing is to use  
2 market prices as all crypto markets are manipulated one way  
3 or another, short selling, long selling, or as in the case  
4 of CEL, by trying to increase value for insiders.

5 So these are the three lines of argument and when  
6 it comes to the more appropriate time, I will have the  
7 references all ready for this.

8 THE COURT: Let me ask one -- ask for  
9 clarification. So I understand one of your arguments to be  
10 that collateral as a legal matter remain property of the  
11 account holder as opposed to becoming property of the  
12 Debtor. Am I correct in that, that's your argument, Mr.  
13 Bronge?

14 MR. BRONGE: That's absolutely correct. And --

15 THE COURT: Okay.

16 MR. BRONGE: And --

17 THE COURT: And I would just say that when we get  
18 to any closing briefs, I would expect the Committee and/or  
19 the Debtor to address that issue specifically. I mean, the  
20 issue has come up in the case before. It's not precisely  
21 what was decided in the Earn opinion because it didn't deal  
22 with the collateral.

23 I think it would during one other earlier day in  
24 the hearing. I think I was actually pointed to and we did  
25 look at the language in the Terms of Use. I think it may

1 have been from an earlier version, I don't remember which  
2 version, and looked at the difference in the language. I  
3 just -- I'm not reaching a conclusion. It just did -- it  
4 appeared to me then, that the Debtor had the better side of  
5 the argument, that Debtor and the Committee had the better  
6 side of the argument that collateral did become property of  
7 the estate.

8 But I'll -- I'm going to reserve any ruling on  
9 that. So I understand your point on that, Mr. Bronge. I  
10 think it's a fair legal argument to -- that has to be  
11 addressed.

12 MR. BRONGE: Yes, Your Honor --

13 THE COURT: I'm not sure I follow --

14 MR. BRONGE: (indiscernible)

15 THE COURT: Let me just say I'm not sure I  
16 followed completely when you were talking about on  
17 valuation, market price.

18 MR. BRONGE: Yeah. So let me see if I can explain  
19 it better. So when -- because of the dollarization that is  
20 done, there is a petition date price on all the different  
21 cryptocurrencies. Now when you -- let's say you do the set  
22 of treatment like the debtor has planned in his plan. You  
23 would use that petition price for bitcoin. So if you settle  
24 for low, one bitcoin will only be valued to \$19,980 roughly.

25 But when you -- when the excess collateral after

1 such treatment is going to be handed back to the borrowers  
2 after the haircut that is in the plan, it will then go out  
3 and buy bitcoin for the remaining value and then use market  
4 prices. And for instance, today I think it's \$8,000, \$9,000  
5 more expensive per bitcoin. And that gives you an  
6 additional 30 percent haircut on your bitcoin recovery. For  
7 me, that is very unfair and especially since bitcoin is  
8 legal tender and used as a currency and a commodity. So --

9 THE COURT: The Bankruptcy Code requires that you  
10 use dollars and not bitcoin. But I think I understand your  
11 point.

12 Mr. Koenig, did you want to respond?

13 MR. KOENIG: Yes. Thank you, Your Honor. Chris  
14 Koenig, from Kirkland & Ellis, for the debtors. I just  
15 wanted to point out on the loan terms of use points is  
16 actually in our confirmation brief and, not surprised, it's  
17 a long document. But if Your Honor wanted to look at that,  
18 we'll for sure address it again in closing argument, but if  
19 you wanted to refresh the citations we have.

20 THE COURT: And I did look at it. But we'll --  
21 it's important. He's not -- Mr. Bronge is not the only  
22 person to raise this --

23 MR. KOENIG: No. It's a very fair point.

24 MR. BRONGE: May I interject there? Because --

25 THE COURT: Yes, go ahead.



1 MR. BRONGE: Yeah. In this response to my motion  
2 that the debtor has filed and I have responded to as well,  
3 they state only citations from version nine of the loan  
4 terms of years and that is, let me say, a little bit unfair  
5 since the wording is different in version seven, which is  
6 the one that controls the loan I'm discussing here.

7 There is also in those pages that the debtor  
8 conveniently didn't want to have as evidence statement that  
9 says that the version that was in force when the loan was  
10 approved is the one that controls the loan, which means if  
11 you have a loan from, let's say, early 2021, you fall under  
12 this version seven. There is no statement of exclusivity --  
13 exclusive property to Celsius in that version seven, while  
14 there is in version nine. And there is quite a few  
15 references where it's abundantly clear that there is no  
16 legal title transfer in version seven.

17 In addition, as I said, in the general disclosure,  
18 risk disclosure, there is specific -- it's a specific  
19 section stating that the borrower's risk is in conjunction  
20 with notes fulfilling the loan obligation. And finally, the  
21 debtor has in the 168 -- where they discuss the 168 issue,  
22 they refer to their master loan agreement in one space, and  
23 there it's again unambiguously clear how it's written when  
24 you do transfer title. Very different from any other terms  
25 and service that the retail borrowers have.

1           Additionally the debtor has not shown, properly  
2           shown any of their master loan agreements which they argue  
3           are different from the retail loan agreements, and that's  
4           why these groups should have different treatment. But as  
5           long as they don't show those agreements, it's just hearsay  
6           in my view. So there's two places in the terms and service  
7           and at least one master loan agreement where you can  
8           explicitly see how the agreement should be written if there  
9           is an attempt to try and transfer the ownership title, and  
10          it's that master loan agreement for the 168 issue. It's  
11          also in the sale and repurchase agreement that was the  
12          structure that was done in UK. You can see -- if you  
13          compare those two agreements, it's abundantly clear that  
14          title is transferred in the sale and repurchase agreement.

15                 But no such statements are available in any of the  
16          terms of service for the retail loans, not even in number  
17          nine. So to me, it's no question here because in a common  
18          sense approach (indiscernible) collateralized loan agreement  
19          not to transfer title. Those are done to provide security  
20          for an obligation to repay a loan. If they --

21                 THE COURT: Well, I'm not sure that the language  
22          in the terms of use supports your argument. But we're going  
23          to leave that for the closing.

24                 MR. BRONGE: Yes. I understand that. But --

25                 THE COURT: Because I don't have the terms of use

1 open in front of me, Mr. Bronge.

2 MR. BRONGE: No. There is many --

3 THE COURT: But I recall it saying that when  
4 collateral is deposited with the debtor, they have the right  
5 to hypothecate, rehypothecate, et cetera, all of the  
6 attributes of ownership.

7 MR. BRONGE: Yes. But --

8 THE COURT: But that's not the issue. I  
9 understand your argument, Mr. Bronge.

10 MR. BRONGE: Yeah. So --

11 THE COURT: (indiscernible) have we gone through  
12 all of his list of exhibits and, one, I overrule the  
13 objection as to the Mashinsky declaration, which comes in as  
14 an admission; 2, 3, 5, 6, 7, 8, 9, 10 and 11 are all  
15 judicial notice.

16 WOMAN 1: Yes, Your Honor. Two points from our  
17 end. To the extent any of his testimony, or I --

18 THE COURT: That wasn't testimony.

19 WOMAN 1: That was exactly my question. I was  
20 wondering if any of that --

21 THE COURT: It's not testimony.

22 WOMAN 1: -- was given testimonial value. Thank  
23 you. Then no cross from us as to that argument.

24 THE COURT: Right.

25 WOMAN 1: And to the extent we are sending up Mr.

1 Bronstein's declaration, my understanding from Your Honor's  
2 order is that we will be entering that evidence --

3 THE COURT: Correct.

4 WOMAN 1: -- as deposition designation --

5 THE COURT: Yes.

6 WOMAN 1: -- from the deposition.

7 THE COURT: Correct.

8 WOMAN 1: Understood. We just would reserve  
9 rights to enter a rebuttal evidence to the extent anything  
10 is still open as to his evidence to that point.

11 THE COURT: That's fine. Okay. All right. All  
12 right.

13 Thank you, Mr. Bronge.

14 MR. BRONGE: Thank you.

15 WOMAN 1: Thank you, Your Honor.

16 THE COURT: All right. Just bear with me now.

17 The next is Harrison Schoenau, and I may have mispronounced  
18 your name. Is Mr. Schoenau on Zoom?

19 Mr. Colodny?

20 MR. COLODNY: Hi, Your Honor. Aaron Colodny, from  
21 White & Case, on behalf of the Official Committee of  
22 Unsecured Creditors. Mr. Schoenau objected to the ADR  
23 procedures.

24 THE COURT: I'm having a little trouble hearing  
25 you.

1 MR. COLODNY: Sorry. Mr. Schoenau objected to the  
2 ADR procedures, and we've been working with him and counsel  
3 for the withhold group this week. I think we're very close.  
4 We're talking about form discovery requests that hopefully  
5 will speed up the exchange of information between parties,  
6 and I hope that we get to the bottom of that shortly. We've  
7 been trying to push that along with Your Honor's comment  
8 last week and hope to be done soon.

9 THE COURT: All right. Mr. Davis, you're next.

10 MR. DAVIS: Thank you, Your Honor. Your Honor,  
11 I'm objecting to the 25-cent CEL token settlement between  
12 the UCC and the debtors. I'm also objecting to the UCC and  
13 the debtors giving me 81 cents for my CEL token in custody  
14 and 25 cents for my CEL tokens in Earn, which is not  
15 equitable, which objections are all outlined in my  
16 "Statement Under Oath of Otis Davis" located at Docket 3769.

17 Your Honor, the day the UCC and the debtors agreed  
18 to give CEL token holders in custody 81 cents which was on  
19 or around February 28, 2023 is the day the debtors and the  
20 UCC agreed that all CEL token holders, regardless if they're  
21 in custody or Earn to get 81 cents and Your Honor approved  
22 that CEL token custody settlement.

23 I also object, Your Honor, to the Max Galka expert  
24 report for undisclosed bias which is also in my statement  
25 under oath at Docket Number 3769. And lastly, Your Honor, I

1 would also like to join in Johan Bronge's deposition  
2 request. I have a few questions for Mr. Blonstein as well.  
3 Thank you.

4 THE COURT: Well, first off, Mr. Davis, unless you  
5 requested and this Court approved remote testimony, your  
6 direct testimony does not come in.

7 What's the position of the debtor with respect to  
8 that? I set this out quite clearly in an order for today's  
9 hearing that Federal Rule of Civil Procedure 43(a) requires  
10 in-court testimony. Written direct is fine, but the  
11 declarant has to be available in court for cross-  
12 examination. Let me first -- were you able to take Mr.  
13 Davis's deposition?

14 MR. MCCARRICK: We were, Your Honor.

15 THE COURT: All right. Do you object to his --  
16 the direct occurring by Zoom?

17 MR. MCCARRICK: I think Your Honor is well within  
18 your rights to enforce the pretrial procedures which were  
19 clear I think on multiple occasiosn that --

20 THE COURT: Where are you located, Mr. Davis?

21 MR. DAVIS: I'm in Jamaica.

22 MR. MCCARRICK: We're prepared to proceed with  
23 cross-examination, to the extent that Your Honor wishes.  
24 But we think your pretrial order was clear and that a  
25 request has not been filed by Mr. Davis to submit his direct

1 or to appear remotely for purposes of this hearing.

2 THE COURT: Mr. Davis, did you receive the order  
3 that said that if you wished to have remote testimony, you  
4 had to file an application?

5 MR. DAVIS: No, Your Honor. I don't recall seeing  
6 it.

7 THE COURT: It was just filed a couple of days  
8 ago.

9 MR. DAVIS: I'll check the docket. But I don't  
10 recall seeing it. I'm outside the country. I simply don't  
11 recall seeing it.

12 MR. MCCARRICK: However Your Honor wants to  
13 proceed, the debtors are happy to, although, if it's  
14 acceptable, we will ask Mr. Davis to go on camera for his  
15 cross.

16 THE COURT: Yeah. Just a second. So I'm  
17 referring to ECF Document 3813. It was filed on the docket  
18 on October 13, 2023, and it says, in part, beginning at the  
19 bottom of Page 1, "For the direct testimony to be admitted  
20 in evidence, witnesses must appear in the courtroom for  
21 cross-examination and redirect examination unless the Court  
22 permits remote appearance by Zoom pursuant to Federal Rule  
23 of Civil Procedure 43(a) which requires, in relevant part,  
24 'for good cause and compelling circumstances and with  
25 appropriate safeguards, the Court may permit testimony in

1 open court by contemporaneous transmission from a different  
2 location.' Witnesses requesting to appear remotely must  
3 file an application with the Court requesting to do so and  
4 must satisfy the compelling circumstances standard." You  
5 didn't do that. I'm going to reserve ruling on whether I'm  
6 going to permit your testimony to be considered by the  
7 Court. You submitted -- you submitted written direct. Let  
8 me just find it again.

9 MR. DAVIS: Your Honor, does that include my  
10 deposition or that's outside my deposition?

11 THE COURT: Just stop.

12 MR. MCCARRICK: Your Honor, the docket number --

13 THE COURT: 3769.

14 MR. MCCARRICK: Beat me to it.

15 THE COURT: So your "Statement Under Oath of Otis  
16 Davis" was submitted before the Court posted what is the  
17 rules. I didn't make up the rules about what oath has to  
18 be. I will take it under consideration. I'll permit you to  
19 cross-examine Mr. Davis now. So your direct testimony is in  
20 evidence, subject to being stricken for failure to comply  
21 with the rules. But I'll permit you to go ahead and cross-  
22 examine Mr. Davis now.

23 MR. MCCARRICK: Thank you, Your Honor. May I  
24 approach with copies of the cross-examination exhibit  
25 binder?



1 THE COURT: Sure. Please. Go ahead.

2 CLERK: Judge Glenn? He has to be sworn in? He  
3 has to be sworn?

4 THE COURT: Yes. He has to be sworn, particularly  
5 since he didn't follow the oath for the --

6 MR. MCCARRICK: Yes, and could I ask that his  
7 camera be enabled?

8 THE COURT: Yeah. Could you turn your camera on,  
9 Mr. Davis?

10 MR. MCCARRICK: Your Honor, I didn't know I was  
11 going to be deposed today. I have a t-shirt and shorts on.

12 THE COURT: Mr. Davis, if you want your testimony  
13 considered, you have to turn your camera on.

14 MR. DAVIS: I'm not saying no. I'm just telling  
15 you I have a t-shirt and shorts on.

16 THE COURT: That's fine. That's fine. If you  
17 would raise your right hand, and the ECRO operator will --

18 MR. DAVIS: Can I put a white shirt -- can I put a  
19 regular white shirt on?

20 THE COURT: Mr. Davis, raise your right hand and  
21 be sworn.

22 CLERK: Do you solemnly swear or affirm that all  
23 the testimony you're about to give before this Court is the  
24 truth and the whole truth?

25 MR. DAVIS: Yes, I do.

1 THE COURT: Okay.

2 MR. MCCARRICK: May I proceed?

3 THE COURT: Yes.

4 CROSS-EXAMINATION OF OTIS DAVIS

5 BY MR. MCCARRICK:

6 Q Good afternoon, Mr. Davis.

7 A Good afternoon.

8 THE COURT: Just identify yourself for the record.

9 MR. MCCARRICK: This is TJ McCarrick, Kirkland &  
10 Ellis, on behalf of the debtors.

11 BY MR. MCCARRICK:

12 Q You've offered an opinion on the value of CEL token,  
13 correct?

14 A The petition date price opinion, which was 81 cents.  
15 Correct.

16 Q And that's right, your view, your personal view is that  
17 CEL token's value as of the petition date was 81 cents,  
18 correct?

19 A Correct.

20 Q That 81 cents figure is based on the price of CEL token  
21 on the petition date?

22 A That is correct.

23 Q And so what you're focused on is the price, correct?

24 A The price.

25 Q And you agree with me there's a difference between

1 price and value, correct?

2 A I do.

3 Q You personally didn't conduct a valuation of CEL token,  
4 correct?

5 A I did not.

6 Q And you're not qualified to provide a valuation of CEL  
7 token, correct?

8 A I'm not an expert.

9 Q Yeah. I tallied up --

10 A No, I'm not.

11 Q I'm sorry. Please.

12 THE COURT: He answered your question, I thought.

13 MR. MCCARRICK: Okay.

14 BY MR. MCCARRICK:

15 Q Okay. You're not trained in valuation techniques,  
16 correct?

17 A Correct.

18 Q And instead you're offering a valuation opinion from  
19 someone you claim is an expert witness, Hussen Faraj,  
20 correct?

21 A Correct.

22 Q And your expert does not agree with you that the value  
23 of CEL token is 81 cents, true?

24 A He came to the valuation of 71 cents.

25 Q And 71 cents is different than 81 cents, correct?

1 A Yes, it is.

2 Q The 71 cents is also different from the 86-cent value  
3 that you discussed in your sworn statement, true?

4 A I don't recall discussing any 86-cent value in my sworn  
5 statement.

6 MR. MCCARRICK: Okay. Can we display Celsius  
7 Exhibit 82, which would be Tab 1 in the cross binder. It's  
8 Mr. Davis's sworn statement.

9 CLERK: Give me one moment, please. All right.  
10 Mr. Lopez is a co-host.

11 MR. MCCARRICK: Thank you, and can we turn to Page  
12 PDF -- or PDF Page 86, Exhibit 82? And can you blow up the  
13 top paragraph there?

14 BY MR. MCCARRICK:

15 Q This is an excerpt from your sworn statement in which  
16 you're discussing the expert report of Mr. Galka, correct?

17 A Correct.

18 Q And what you're observing here is that certain  
19 dislocation events were backed out, Mr. Galka's price should  
20 have been 86 cents, correct?

21 A I think that should have been -- it could have been 81.  
22 But I don't recall doing the 86 cents.

23 Q Well, do you see at the last line here where it says, I  
24 will submit to this Court the average price between both  
25 dislocation events is 86 cents?

1 A I see that.

2 Q Okay. You also in your --

3 MR. MCCARRICK: You can take that down, Mr. Lopez.

4 Thank you.

5 BY MR. MCCARRICK:

6 Q You also in your sworn statement refer to a \$2.01 price  
7 value, correct?

8 A Correct.

9 Q And your expert doesn't agree with you that the value  
10 of CEL token is \$2.01, correct?

11 A He does not.

12 Q You also discussed a \$2.88 figure in your sworn  
13 statement, correct, Mr. Davis?

14 A Correct.

15 Q And your expert doesn't agree with you that \$2.88 is  
16 the value of CEL token on the petition date, correct?

17 A He didn't opine on the \$2 billion claim that was filed  
18 in the FTX bankruptcy.

19 Q So is that a yes to my question, Mr. Davis, that your  
20 expert does not agree with you that the value of CEL token  
21 on the petition date is \$2.88?

22 A My expert agreed that the value is 71 cents. You are  
23 correct.

24 Q Okay. So fair to say, sir, you've put forward four  
25 different potential CEL token valuations, 81 cents, 86

1 cents, \$2.01 and \$2.88, correct?

2 A Sir, I'm not an expert. The \$2.01 came from a  
3 dislocation event. But your expert, Mr. Galka, said as a  
4 result the price would be 35.5 cents based on a dislocation.  
5 So I said why not use the Terra Luna dislocation event which  
6 is a much bigger dislocation event. Why are you just using  
7 one dislocation event? We had two huge dislocation events  
8 in crypto and the Terra Luna one was much bigger.

9 Q Okay, and just to be clear, what you're talking about  
10 now are the two dislocation events that you think should  
11 have been, or that you criticize Mr. Galka for not using,  
12 correct?

13 A Correct.

14 Q Or for not backing out, I should say, correct?

15 Q My opinion is if he's going to use one dislocation  
16 event, why not use other dislocation event, which was much  
17 bigger.

18 Q And let's just get on the record what those dislocation  
19 events are. The first dislocation event is the collapse of  
20 Terra Luna you just testified about, correct?

21 A Correct.

22 Q The second dislocation event is the pause on June 12,  
23 2022, on Celsius's platform, correct?

24 A Correct.

25 Q And you think, sir, that the fair market value of CEL

1 token is best measured before both of those dislocation  
2 events, don't you?

3 A Sir, I'm not an expert. My expert agreed that 71 cents  
4 is a fair value for CEL token. I was simply pointing out  
5 that -- I was simply pointing out that Mr. Galka, prior to  
6 the pause, said the price should be 35.5 cents. That's one  
7 dislocation event. And I was saying to the Court, if you're  
8 going to use this dislocation event, why not use the other  
9 dislocation event where the price was \$2.01? You can't just  
10 use one dislocation event and ignore a bigger dislocation  
11 event.

12 Q Okay. I just want to make clear, it is your sworn  
13 testimony that the fair market value of CEL token is best  
14 measured before the Terra Luna dislocation event and the  
15 pause, true?

16 A Correct. That's what I wrote.

17 Q That's what you put in your sworn statement, correct?

18 A That's what I put in my sworn statement.

19 Q Terra Luna collapsed May 6, 2022, correct?

20 A It happened over a timeframe. It didn't happen in one  
21 day.

22 Q Okay. What's the timeframe, sir?

23 A I think the timeframe was around -- I think it was  
24 around May 7th to May 12th, May 13th.

25 Q All right. So it's your position that any valuation of

1 CEL token should be before May 7, correct?

2 A Sir, my opinion is if Mr. Galka is going to use one  
3 dislocation event, why not use another? That's all I was  
4 saying. There are two dislocation events. Why would you  
5 choose the lower one? If you're going to choose 35.5 cents,  
6 why not choose the \$2.01 cents?

7 Q My question, Mr. Davis, is, is it your position that  
8 the fair market value of CEL needs to be measured, or is  
9 best measured before both of those dislocation events, yes  
10 or no?

11 A Sir, my fair market value of CEL, I agree with my  
12 expert, should be 71 cents. I'm not an expert. I did  
13 provide this document.

14 THE COURT: Mr. Davis, listen to the question  
15 again, and then answer the question.

16 Go ahead, ask your question again, Mr. McCarrick.

17 BY MR. MCCARRICK:

18 Q Mr. Davis, is it your position that the fair market  
19 value of CEL token is best measured before the collapse of  
20 Terra Luna and the pause, yes or no?

21 A No.

22 Q Okay. You submitted a sworn statement in this case,  
23 correct?

24 A Correct.

25 Q Told the truth in that sworn statement, didn't you?



1 A I did.

2 Q You had the chance -- actually, you submitted an  
3 unsworn statement first, correct?

4 A I'm not sure what that means.

5 Q Okay. Well, you submitted your sworn statement after  
6 reviewing it carefully, correct?

7 A Correct.

8 Q And you stand by everything in that sworn statement?

9 A I do.

10 MR. MCCARRICK: Okay. Mr. Lopez, can we please  
11 put Celsius Exhibit 81 back up? And we're going to go to  
12 Page 6 of the PDF.

13 THE COURT: What's the page of the ECF? I want to  
14 see it my screen here so I can see it.

15 MR. LOPEZ: ECF 3769, Page 6.

16 THE COURT: Page 6? Okay. Go ahead.

17 MR. MCCARRICK: It's Page 7 of the PDF with the  
18 exhibit slip sheet. Okay.

19 THE COURT: Go ahead.

20 BY MR. MCCARRICK:

21 Q This is your sworn statement, correct?

22 A Correct.

23 Q Do you see where you write, "I submit to this Court  
24 that the fair market value of CEL token is best measured  
25 before both of these dislocation events, one being the

1 pause, the other being the gigantic collapse of the \$60  
2 billion crypto project, Terra Luna."

3 A That was my opinion before I was in contact with my  
4 expert. I filed it before speaking to my expert. I see  
5 that, yes.

6 Q Well, that's not true, sir, is it? You contacted the  
7 expert during the first or second week of October, right?

8 A But he didn't agree to testify then. We were just  
9 talking.

10 Q Okay.

11 A He didn't agree to testify until, I think, around seven  
12 or eight days ago, or write a report, I should say.

13 Q When was the first time you talked to Mr. Faraj?

14 A The first time ever?

15 Q Yes, sir.

16 A I think it was after Celsius filed for bankruptcy, and  
17 he was on a (indiscernible) where I was on, I think,  
18 probably July 2022 or maybe August 2022.

19 Q Okay. Well, the first time you talked to Mr. Faraj  
20 about the expert report in this case was on October 6th,  
21 wasn't it?

22 A It wasn't about the expert report that we discussed on  
23 October 6th. He just contacted me and said, if you need  
24 some help, I can provide some assistance. We didn't speak  
25 about him writing a report until about, I think, around

1 seven or eight days ago.

2 Q Okay. Well, you posted on Twitter about Mr. Faraj's  
3 71-cent valuation before October 11th, didn't you?

4 A Correct.

5 Q And you submitted this sworn statement on October 11th,  
6 correct?

7 A October 11th was around five or six days ago, sir.

8 Q Right. My question is, you were aware of Mr. Faraj's  
9 71-cent valuation before you submitted this sworn statement  
10 to the Court, true?

11 A I was not aware of it.

12 Q Okay. So it's your -- I just want to be very clear.  
13 It's your sworn testimony that you were not aware of the 71-  
14 cent valuation before October 11th?

15 A It is my sworn testimony that I was not aware of Mr.  
16 Faraj's 71-cent valuation before I submitted this. That is  
17 my testimony, my sworn testimony.

18 Q Okay. In any event, you generally think that any  
19 valuation should exclude trading data from the Terra Luna  
20 collapse, correct?

21 A I'm not sure what that means.

22 Q Okay. You agree with me that Mr. Faraj, his own  
23 valuation period, looked at data from May 21st to June 9th,  
24 correct?

25 A Correct.

1 Q And you don't criticize Mr. Faraj for doing that, do  
2 you?

3 A No, I do not. He's an expert. I'm not.

4 Q Well, Mr. Galka is an expert too, right?

5 A Yes. He's an expert. I disagree with his opinion.

6 Q Okay. You agree with me that Mr. Faraj, your expert  
7 witness in this case, did not value CEL token as of the  
8 petition date, correct?

9 A He did not.

10 Q Okay.

11 A You testified that Mr. Faraj contacted you to offer an  
12 expert opinion in this case, right? He was the first one to  
13 reach out to you?

14 A I don't recall who contacted who first. I remember  
15 there are some tweets back and forth that were public, and  
16 he could have contacted me first. I could have contacted  
17 him first. I really don't remember who contacted who first,  
18 but I believe he contacted me first. But as I said, I don't  
19 recall who contacted who first.

20 Q Okay. Well, you gave a deposition in this case,  
21 correct?

22 A Correct.

23 Q The deposition was, like, 48 hours ago?

24 A Correct.

25 Q You took the same oath that you took today?

1 A Yes, I did.

2 Q And you told the truth during that deposition?

3 A Yes, I did.

4 MR. MCCARRICK: Okay. Mr. Lopez, can we look at  
5 Page 41, Lines 2 to 5 of Mr. Davis's deposition?

6 BY MR. MCCARRICK:

7 Q Do you have that? Do you see that on your screen  
8 there, sir?

9 A I see that.

10 Q And did I ask you this question, and did you give this  
11 answer:

12 Question: Okay. So who contacted who first? Did you  
13 contact Mr. Faraj or did Mr. Faraj contact you?

14 Answer: He contacted me.

15 That's the testimony you gave, correct?

16 A Correct.

17 MR. MCCARRICK: Okay. You can take that down.

18 BY MR. MCCARRICK:

19 Q You spoke with Mr. Faraj twice on the phone, correct?

20 A Correct.

21 Q The first time, he offered to provide an expert report  
22 on the value of CEL token, correct?

23 A I don't recall exactly what the first conversation was  
24 about. They may blend in my mind, but if you have something  
25 to refresh my recollection, I'm happy to look at it.

1 Q Sure. We can go back to your deposition. Let's look  
2 at Page 33, Lines 20 to 24. And do you see where I asked  
3 you what kind of assistance did Mr. Faraj offer, ad your  
4 answer was, he said he could prepare an expert report and do  
5 an analysis and come to the fair market price of CEL token.  
6 Do you see that?

7 A Correct.

8 Q Is your recollection refreshed that that's the  
9 assistance that Mr. Faraj offered you during the first phone  
10 call you had with him?

11 A Correct, and I recall asking him if there would be any  
12 charge, if he would charge, and he said no, he would not  
13 charge me.

14 Q Okay. So Mr. Faraj said he wouldn't charge you. Did  
15 he ask you to do anything in return?

16 A No. He did not.

17 Q Did he ask you to do --

18 A I did ask him --

19 Q Sorry. Go ahead.

20 A I did ask him why he's doing this. He says he loved  
21 the space and he believes he can add value and give the  
22 Court a proper valuation.

23 Q Okay. The second phone call you had with Mr. Faraj,  
24 you claim you didn't discuss anything related to these  
25 Chapter 11 cases at all, right?

1 A We didn't discuss anything related to the Chapter 11  
2 cases because I said to him at the beginning of the  
3 conversation that I don't have counsel here on this phone,  
4 so I don't have any attorney-client privilege as far as I  
5 know. So we shouldn't even discuss anything related to the  
6 Chapter 11 or your expert report or what you're going to do  
7 or your value or anything like that because it's all  
8 discoverable.

9 Q Well, we'll get to whether or not it's discoverable in  
10 a second. You communicated with Mr. Faraj in writing as  
11 well, correct?

12 A Correct.

13 Q You direct messaged Mr. Faraj on Twitter, correct?

14 A Correct.

15 Q You had conversations with Mr. Faraj on WhatsApp  
16 correct?

17 A Correct.

18 Q And at your deposition, I asked you to read those  
19 messages with your expert witness into the record, didn't I?

20 A Yes, you did.

21 Q And you refused to do that, didn't you, sir?

22 A I did not read them into the record.

23 Q You acknowledge --

24 THE COURT: Did you refuse to do that?

25 THE WITNESS: I did refuse to do that, Your Honor.

1 THE COURT: Go ahead.

2 BY MR. MCCARRICK:

3 Q You acknowledge that in those messages you talked about  
4 what the Court was interested in with respect to the value  
5 of CEL token, correct?

6 A I don't recall that.

7 MR. MCCARRICK: Okay. Could we bring up Mr.  
8 Davis's deposition, Page 44, Lines 13 to 22.

9 BY MR. MCCARRICK:

10 Q And I asked you some questions about whether or not you  
11 had discussed the Court or what the Court is interested in,  
12 correct?

13 A Correct.

14 Q Did I ask this question, and did you give this answer:

15 Question: I'm not assuming you disparaged Judge Glenn  
16 at all. I'm just wondering whether or not you had any  
17 conversations about what you think Judge Glenn might be  
18 interested in and what testimony you might want to elicit  
19 from Mr. Galka -- not Mr. Galka, excuse me, Mr. Faraj.

20 Answer: The conversation would be around Judge Glenn  
21 wants a value for CEL token. Mr. Galka couldn't give him  
22 that value.

23 Did I ask that question? Did you give that answer?

24 A Yes, you did.

25 MR. MCCARRICK: Okay. You could take that down,



1 Mr. Lopez.

2 BY MR. MCCARRICK:

3 Q Mr. Davis, you're familiar with the concept of utility  
4 token, correct?

5 A Yes, I am.

6 Q A utility token is a token that is used in connection  
7 with a particular ecosystem or platform, correct?

8 A Correct.

9 Q And a utility token's value primarily derives from the  
10 use cases it has on the ecosystem it's in, fair?

11 A That is not fair.

12 Q Well, you would agree with me that the more utilities  
13 that a token has, the better it is, right?

14 A Correct.

15 Q And CEL token is a utility token, in your view, right?

16 A It is.

17 Q Before the pause or petition date, you thought that  
18 CEL's utility could use some improvement, correct?

19 A Correct.

20 Q In your view, there weren't enough use cases for CEL  
21 before the pause and petition date, correct?

22 A Correct.

23 Q And in fact, you talked with Celsius's former CEO, who  
24 is now under federal indictment, Alex Mashinsky, about how  
25 to improve CEL, correct?

1 A Correct.

2 MR. MCCARRICK: Okay. Mr. Lopez, we'd like to  
3 look at Celsius Exhibit 90, which is Tab 3 in the cross  
4 binder. And can we go to Page 3 of the PDF? And can we  
5 blow up the -- no, the one before that. I'm adjusting my  
6 head, Mr. Lopez. Thank you.

7 BY MR. MCCARRICK:

8 Q That's an email from yourself to Mr. Mashinsky. Do you  
9 see that?

10 A What date is this?

11 Q December 6, 2021. Do you see that's an email from you  
12 on December 6, 2021?

13 A Correct. I see that.

14 Q It says CEL token fixes, correct?

15 A Correct.

16 Q And you proposed a number of changes to the CEL token  
17 program, right?

18 A Correct.

19 Q And the idea was to make CEL more attractive to users,  
20 true?

21 A True.

22 Q One of the reasons you wanted to make CEL more  
23 attractive to users is so that Celsius wasn't the only whale  
24 in the marketplace doing buybacks; is that correct?

25 A Celsius was not the only whale that I know that was in

1 the marketplace doing buybacks.

2 MR. MCCARRICK: Okay. Let's turn to Page 5 of the  
3 PDF, and I want to look at Entry Number 32. Page 4. There  
4 we go. Could we blow up Number 32?

5 BY MR. MCCARRICK:

6 Q Do you see where you wrote Mr. Mashinsky, you can  
7 guarantee more people in the market like Celsius buying lots  
8 of CEL tokens every week, and this creates a new flywheel  
9 effect. Do you see that?

10 A I see that.

11 Q So it's your understanding that in December 2021,  
12 Celsius was buying lots of CEL tokens on a weekly basis,  
13 right?

14 A They did their weekly buybacks on a weekly basis.

15 Q And it's your understanding that those weekly buybacks  
16 created a flywheel effect, correct?

17 A Correct.

18 Q And the gist of a flywheel effect is that by increasing  
19 demand, CEL token price is going to rise and the cycle is  
20 going to reinforce itself, true?

21 A True.

22 Q And at that time, sir, was it or was it not your view  
23 that Celsius was the only whale making buybacks?

24 A Sir, I know what I wrote, but I could not have known  
25 how many whales are buying CEL token. I wrote that, but

1       there is no way for me to know how many whales are buying  
2       CEL tokens. We had a lot of whales in Celsius.

3       Q       The only whale that you knew of at the time, sir, was  
4       Celsius making buybacks, right?

5       A       I didn't know of any of a specific whale, but there  
6       were other whales, but I didn't know of any of a specific  
7       whale.

8       Q       Okay. This isn't the last time you talked to Mr.  
9       Mashinsky about CEL.

10               MR. MCCARRICK: Actually, Your Honor, we'd like to  
11       move Exhibit 90 into evidence.

12               THE COURT: Any objections? Exhibit 90 is in  
13       evidence.

14               (Exhibit 90 admitted into evidence.)

15       BY MR. MCCARRICK:

16       Q       Okay. That's not the last time you talked to Mr.  
17       Mashinsky about CEL token utility, correct?

18       A       Correct.

19               MR. MCCARRICK: Okay. Mr. Lopez, can we bring up  
20       Celsius Exhibit 87? Can we turn to Page 2 of the PDF, and  
21       can we blow up the bottom email from Mr. Davis so we can see  
22       what the date is?

23       BY MR. MCCARRICK:

24       Q       This is an email from you to Mr. Mashinsky on January  
25       26, 2022. Do you see that?

1 A I see that.

2 Q And that is, in fact, a fair and accurate copy of your  
3 email. We looked at this during your deposition, right?

4 A Right.

5 MR. MCCARRICK: Okay. Your Honor, we'd offer  
6 Celsius Exhibit 87 into evidence.

7 THE COURT: All right. It's admitted in evidence.

8 (Exhibit 87 admitted into evidence.)

9 MR. MCCARRICK: All right. Let's look at Page 3  
10 of the PDF, and I want to look at the paragraph, the last  
11 paragraph that says, Alex, all you need. Can we blow that  
12 up, Mr. Lopez?

13 BY MR. MCCARRICK:

14 Q Do you see in this paragraph, Mr. Davis, where you  
15 write, we also voiced our concerns that CEL has no utilities  
16 whatsoever?

17 A I see that.

18 Q And you write, it's only when the tide goes out you  
19 realize who's swimming naked. The tide has gone out and CEL  
20 is swimming naked. Do you see that?

21 A I see that.

22 Q And that was your view in January 2022. CEL had no  
23 useful utilities, correct?

24 A CEL had no good utilities. They could add more. They  
25 did have utilities. There was Earn in CEL, discount on

1 loans and higher swap limits. Those are utilities. And you  
2 can also take loans against your CEL token. That's a big  
3 utility.

4 Q Well, you said in January 2022 that it had no useful  
5 utilities, right?

6 A Sir, I know what I said. I wrote the email to get the  
7 attention of Alex Mashinsky because I could not get the  
8 attention of Alex Mashinsky no matter what I did.

9 Q So is it your answer that you were saying something  
10 that might have been inaccurate in order to get the  
11 attention of someone whose attention you wanted?

12 A I was being hyperbolic. You seem to think that Alex  
13 Mashinsky and I had a good relationship before the pause.  
14 We did not and we don't now. I was hounding him for 15  
15 months to add useful utilities. That's why I wrote the  
16 email.

17 Q I just want to break that down, Mr. Davis. You were  
18 hounding Mr. Mashinsky for 15 months to add useful utilities  
19 to CEL that you did not think it had, correct?

20 A I didn't think it had enough utilities. I didn't think  
21 Earn in CEL, discount on loans, highest swap limits and  
22 taking a loan against your CEL token was enough. I thought  
23 there should be more. An example that I gave you in the  
24 deposition was withdrawal fees. When you withdraw Bitcoin,  
25 ETH or other altcoins, the fee should be paid in CEL.

1 Q Understood, Mr. Davis. I was just following up on your  
2 last answer. Your last answer was that you had been  
3 hounding Mr. Mashinsky for 15 months to add useful utilities  
4 to CEL, correct? That was your testimony.

5 A Correct.

6 Q And he didn't add that utility, correct?

7 A He didn't add any more utilities.

8 MR. MCCARRICK: Okay. Can we go to the next page?

9 BY MR. MCCARRICK:

10 Q You just listed a number of utilities that you said CEL  
11 had at the time, right?

12 A Correct.

13 Q You didn't like any of those utilities, did you?

14 A That's not true. I love the swap utilities. I love  
15 the loans utilities, had my CEL-backed loans liquidated. I  
16 think the loans was one of the best utilities. I just  
17 wanted him to add more. As I said, I was being hyperbolic.  
18 We just needed more utilities as a community.

19 Q Okay. Well, you see here where you wrote Mr.  
20 Mashinsky: I don't know how one -- withdrawn.

21 You see here that you wrote Mr. Mashinsky, I don't know  
22 of one CEL utility that I use or that I like, not one.

23 That's what you wrote in January of 2022, correct?

24 A That was hyperbolic. I obviously had loans at that  
25 point. And the loans were -- they totaled to be seven

1 figures, so that was hyperbolic. A loan is a very useful  
2 utility.

3 MR. MCCARRICK: Okay. Mr. Lopez, you can take  
4 that down.

5 BY MR. MCCARRICK:

6 Q Sir, it's true that you communicated with Mr. Mashinsky  
7 in between the pause and the petition date, right?

8 A Your definition of communication, as we agreed in the  
9 deposition, we disagree on because you are the attorney that  
10 represented Mr. Mashinsky at that point, and you instructed  
11 him not to speak to anybody. I sent Mr. Mashinsky a direct  
12 message, and he did not respond. You are the attorney  
13 Kirkland & Ellis that represented Mr. Mashinsky between the  
14 pause and when he was ousted, and you directed him not to  
15 speak to anybody, and he did not respond to that DM, and  
16 that's what I told you at the deposition.

17 Q Well, I'll represent to you I've never spoken to Mr.  
18 Mashinsky in my life. But my question -- I won't use word  
19 communication, if it helps.

20 A I meant your firm.

21 Q You mentioned -- or withdrawn.

22 You messaged Mr. Mashinsky in between the pause and the  
23 petition date, true?

24 A True.

25 MR. MCCARRICK: All right. Let's put up Celsius



1 Exhibit 102, which are a series of direct messages between  
2 Mr. Davis and Mr. Mashinsky, and Your Honor, we would offer  
3 Exhibit 102 into evidence.

4 THE COURT: What is it comprised? Just tell me  
5 what it is.

6 MR. MCCARRICK: Your Honor, it's a series of  
7 direct messages that begins in June of 2022 between Mr.  
8 Mashinsky and Mr. Davis.

9 THE COURT: Are there messages back from  
10 Mashinsky?

11 MR. MCCARRICK: There are not any messages.

12 THE COURT: They're all messages from Mr. Davis to  
13 Mr. Mashinsky?

14 MR. MCCARRICK: Yes, Your Honor.

15 THE COURT: All right. Exhibit 102 is admitted in  
16 evidence.

17 (Exhibit 102 admitted into evidence.)

18 BY MR. MCCARRICK:

19 Q Okay. Do you see here on June 24, 2022, that you write  
20 Mr. Mashinsky, I've singlehandedly inspired the community  
21 against these short sellers.

22 A I see that.

23 Q That refers to your efforts to organize the so-called  
24 short squeeze, correct?

25 A It wasn't an effort to organize. I was DM'ing him to

1 get his attention, like I said before.

2 Q I'm sorry. I couldn't understand your answer. Could  
3 you please repeat it?

4 A I was being hyperbolic once again here.

5 Q Okay. Well, fair enough.

6 A I can't singlehandedly inspire an entire community.

7 Q Okay. So when you said that here, that was false.

8 A It was not false. I was being hyperbolic. I wanted  
9 him to respond to the message, but I knew between the pause  
10 and petition date, he was probably pretty busy. And as you  
11 can see, I did not get a response.

12 Q All right. Well, do you see a couple of lines down  
13 where you say, that's what you need them to do, make them  
14 believe, give them a reason to believe. Useful utility/use  
15 cases around CEL and not gimmicks will give them that reason  
16 to believe. Do you see that?

17 A Yes, I see that.

18 Q And that's consistent with the January 2022 email we  
19 just looked at where you're complaining about the use cases  
20 of CEL, right?

21 A In this instance, I thought we were going to open back  
22 up. The pause is just temporary. And my opinion was if  
23 you're going to open back up, you need to add more utilities  
24 to CEL tokens. The ones that you have, because we have a  
25 market downturn, would just not be enough. You need to add

1 more utilities.

2 Q Well, you also were complaining about the lack of  
3 utilities on CEL back in January of 2022, well before any  
4 pause, correct?

5 A Yes.

6 Q Okay. Sir, is it your view today that CEL is  
7 worthless?

8 A No, it's not.

9 MR. MCCARRICK: All right. Let's put up Celsius  
10 Exhibit 99, which is a tweet from Mr. Davis. And can we  
11 blow up the top part of that, Mr. Lopez? I can't see it.

12 First we'd move Celsius Exhibit 99 into evidence.

13 THE COURT: It's in evidence.

14 (Exhibit 99 admitted into evidence.)

15 BY MR. MCCARRICK:

16 Q Okay. Mr. Davis, do you see where you wrote here, at  
17 Celsius Network is a bankrupt company with a worthless  
18 token?

19 A I see that.

20 Q I asked you about this tweet at your deposition,  
21 correct?

22 A I think you did.

23 Q I asked whether CEL is a worthless token, and you told  
24 me that the document speaks for itself, correct?

25 A I think I said that.

1 Q Do you want me to refresh your recollection? Would  
2 that be helpful?

3 A Yes, please.

4 MR. MCCARRICK: Okay. Can we bring up Mr. Davis's  
5 deposition, Page 92, Lines 13 to 14.

6 MR. LOPEZ: (indiscernible)

7 MR. MCCARRICK: (indiscernible) the Internet?  
8 Okay.

9 BY MR. MCCARRICK:

10 Q Well, Mr. Davis, I can read it out loud to you.

11 MR. MCCARRICK: And, Your Honor, it's the first  
12 tab in your binder. It's Page 92. It's Line 13 to 14.

13 BY MR. MCCARRICK:

14 Q And I'll represent to you that the question I asked  
15 was:

16 Question: Okay --

17 THE COURT: I have it open and I see it. Go ahead  
18 and put it in the record.

19 BY MR. MCCARRICK:

20 Q Okay. You were asked this question, and you gave this  
21 answer Mr. Davis:

22 Question: Okay. Is CEL a worthless token?

23 Answer: The document speaks for itself, sir.

24 Does that sound familiar to you?

25 A What date is that document?

1 Q What day was that? That was two days ago when we spoke

2 --

3 A What date? No. What date is the tweet, sir?

4 Q Oh, the date of the tweet. Well, it was certainly  
5 after the bankruptcy. Give me one moment. I can get that  
6 for you. It looks like it's in October of 2022.

7 THE WITNESS: Objection, Your Honor, relevance.  
8 Post-petition.

9 THE COURT: You agree then, that the Celsius token  
10 is worthless post-petition?

11 THE WITNESS: I didn't think it was fully  
12 worthless.

13 THE COURT: I'm asking -- I'm asking you a direct  
14 question. Do you believe that the Celsius token is  
15 worthless post-petition?

16 THE WITNESS: No.

17 BY MR. MCCARRICK:

18 Q Okay. Mr. Davis, that's what you wrote, though, in  
19 October of 2022, correct, that Celsius is a bankrupt company  
20 with a worthless token, right?

21 A I see that.

22 Q Is that more hyperbole?

23 A I wrote that. But Celsius cannot be worthless because  
24 the market cap right now is -- I don't recall exactly what  
25 it is, but I'm sure it's something like \$40 or \$50 million.

1 That is obviously not worthless. It is hyperbole.

2 Q Okay, and when I asked you, after you had told me that  
3 the document speaks for itself, again, whether or not CEL  
4 was worthless, you took the Fifth Amendment, didn't you?

5 A I don't recall what I said.

6 Q You don't recall what you said. Okay. Well, why don't  
7 we bring back your deposition.

8 MR. MCCARRICK: And let's go to Pages 93, 24 to  
9 94, 7. Can I have that, Mr. Lopez?

10 MR. LOPEZ: I have to log on (indiscernible) --

11 BY MR. MCCARRICK:

12 Q Okay. Well, I'll represent to you --

13 THE COURT: Just read him question and answer.

14 MR. MCCARRICK: Yes.

15 BY MR. MCCARRICK:

16 Q Question: Do you think that CEL is a worthless token  
17 today?

18 Answer: I'll take the Fifth Amendment. Do you feel  
19 better?

20 Does that sound familiar?

21 A It sounds familiar.

22 Q Yeah. That's what you said, isn't it?

23 THE COURT: Ask him the next --

24 THE WITNESS: You kept asking me the same question  
25 over and over again and it was asked and answered.

1 MR. MCCARRICK: Let's go to Page 94. You're still  
2 off, Mr. Lopez.

3 MR. LOPEZ: (indiscernible)

4 MR. MCCARRICK: Okay.

5 THE COURT: I'll read it to you, Mr. Davis. Page  
6 94, Line 3: You're taking the Fifth Amendment on whether or  
7 not you think CEL is a worthless token.

8 Answer on Line 6: Taking the Fifth about you  
9 asking questions outside the petition date.

10 Question: Okay. Is it your position that CEL was  
11 a worthless token on the petition date?

12 No.

13 Question: What changed between, in your view, why  
14 is it worthless after the petition date, but not on the  
15 petition date?

16 Answer: In my mind, after the petition date, you  
17 can't use any utilities.

18 BY MR. MCCARRICK:

19 Q That was your testimony, right, Mr. Davis?

20 A Correct.

21 Q And so your testimony is that the reason you don't  
22 think that CEL has value after the petition date is because  
23 you're unable to use it anymore, correct?

24 A You can use CEL token for anything in DeFi, just like  
25 you can use DOGE that has no utility, that has a \$5 billion

1 market cap.

2 Q Understood, Mr. Davis. I'm just asking when you say,  
3 in my mind after the petition date, you can't use any  
4 utilities, that's the reason you called it worthless after  
5 the petition date?

6 A That was hyperbole, and that's what I said because you  
7 can't use it. The platform is obviously paused, so you  
8 can't take a loan. You can't get discount interest on  
9 loans.

10 Q And that was true on the pause date as well, correct,  
11 sir?

12 A As of June 13, 2022, no one could use utilities for  
13 CEL.

14 Q Okay. I just have a few more questions, Mr. Davis.  
15 Have you ever publicly threatened anyone in connection with  
16 these Chapter 11 proceedings?

17 A I know what you're going to ask me. You asked me at my  
18 deposition. But I don't consider that a threat.

19 MR. MCCARRICK: Okay. Well, let's look at it.  
20 Let's go to Celsius Exhibit 94, and that's a tweet from  
21 February 21, 2023.

22 Deanna, can you grant Mr. Lopez rights to share  
23 his screen again?

24 CLERK: Judge, unfortunately, Deanna stepped away  
25 from her desk, and I can't give rights. We'll have to wait



1 for her to return, unfortunately.

2 BY MR. MCCARRICK:

3 Q Okay. Well, Mr. Davis, you said that you know the  
4 tweet that I'm referring to, correct?

5 A Correct.

6 Q Celsius Exhibit 94 is a Tweet you wrote on February 21,  
7 2023, correct?

8 A Correct.

9 MR. MCCARRICK: And, Your Honor, just for your  
10 reference, that's going to be Tab 5. Oh, no, I'm sorry,  
11 it's not Tab 5 in the binder. We'll have to wait for Mr.  
12 Lopez.

13 THE COURT: Okay.

14 BY MR. MCCARRICK:

15 Q Let me ask you just if you recall it. Do you recall  
16 making the following post: the days are coming when we CEL  
17 token holders will lift you up out of the water with butcher  
18 hooks and the rest of you with fish hooks and then burn your  
19 tabernacle to the ground for your error towards us CEL token  
20 holders. Do you remember issuing that tweet?

21 A It's part of a Bible quote. I remember it.

22 Q Okay, and when I asked you who that tweet was directed  
23 to, you refused to answer, correct?

24 A I think I refused to answer initially, and then I  
25 answered. When you said, is it directed at White & Case, I

1 said no. It's not directed at White & Case. White & Case  
2 and I had no beef at that point.

3 Q Well, who's it directed at, sir?

4 A It was directed at all the people that were attacking  
5 CEL token holders.

6 Q And when you say attack CEL token holders, what do you  
7 mean?

8 A The people on Twitter. All the people on Twitter that  
9 are saying we deserve zero. You guys deserve nothing. Go  
10 away. You're lucky you're getting something.

11 Q Okay. So it's your position --

12 A Told me to burn in hell.

13 MR. MCCARRICK: Your Honor, permission to approach  
14 with copies of Exhibit 94. Thank you.

15 THE WITNESS: And these are the people that were  
16 making threats towards CEL token holders.

17 BY MR. MCCARRICK:

18 Q Understood. I just want to clean up your testimony a  
19 little bit. Is it your testimony that the people who need  
20 to be hung by butcher and fish hooks are the people who  
21 think that CEL has a value of zero?

22 A Sir, it was hyperbole, and they were threatening me,  
23 telling me, you should burn in hell, go to hell. And as you  
24 know, there are a lot of threats. Your firm and White &  
25 Case have said the same thing, that you guys have to look

1 over your shoulders. We did, too. Same thing that was  
2 going on at that point. We even brought it to the judge's  
3 attention. People's lives are in danger. There are a lot  
4 of threats. So I was pushing back on those threats. And I  
5 don't know why you would think it was White & Case. I had  
6 no beef with White & Case at that point.

7 MR. MCCARRICK: Okay. Your Honor, we'd move  
8 Exhibit 94 into evidence.

9 THE COURT: Into evidence.

10 (Exhibit 94 admitted into evidence.)

11 MR. MCCARRICK: Thank you for your time, Mr.  
12 Davis. To the extent the committee has any questions, I'll  
13 pass the witness.

14 THE COURT: Mr. Colodny?

15 MR. COLODNY: No questions at this time, Your  
16 Honor.

17 THE COURT: Anybody else wish to examine Mr.  
18 Davis?

19 MR. KIRSANOV: Yes, Your Honor. Dmitry Kirsanov,  
20 pro se.

21 THE COURT: Go ahead.

22 CROSS-EXAMINATION OF OTIS DAVIS

23 BY MR. KIRSANOV:

24 Q Mr. Davis, good afternoon.

25 A Good afternoon, Dmitry.

1 Q Mr. Davis, does dogecoin trade today?

2 A Yes, it does.

3 Q Mr. Davis, is dogecoin worthless?

4 A No, it's not.

5 Q Mr. Davis, do you know that expert witness Max Galka  
6 obtained seed funding from Alameda Research?

7 MR. MCCARRICK: Objection.

8 THE COURT: Sustained.

9 THE WITNESS: Yes, I do.

10 THE COURT: Sustained. Strike the answer.

11 BY MR. KIRSANOV:

12 Q Mr. Davis, do you know that Alameda Research was FTX's  
13 sister company?

14 A Yes, I do.

15 Q Mr. Davis, did you know that FTX was a competitor of  
16 Celsius?

17 A Yes, it was.

18 Q Mr. Davis, do you think there was market manipulation  
19 from competitors of Celsius?

20 MR. MCCARRICK: Objection.

21 THE WITNESS: Please repeat the question. I  
22 didn't hear all of the question.

23 MR. KIRSANOV: Certainly.

24 BY MR. KIRSANOV:

25 Q Mr. Davis, do you think there was market manipulation

1 from the competitors of Celsius?

2 A Yes.

3 Q Mr. Davis, is the CEL token traded today?

4 A Yes, it is.

5 Q Mr. Davis, has CEL token been traded after bankruptcy?

6 A Yes, it has.

7 Q Mr. Davis, did you have loans on Celsius?

8 A Yes, I did.

9 Q Mr. Davis, did all your loans get liquidated?

10 A Yes, they did.

11 Q Mr. Davis, did your CEL from liquidation go to your  
12 custody wallet?

13 A Yes, it did. I believe 54,000 CEL tokens went to my  
14 custody wallet.

15 Q I see. Mr. Davis, did you know the Chapter 7  
16 liquidation rates across --

17 MR. MCCARRICK: Objection.

18 THE COURT: Sustained. Ask another question, Mr.  
19 Kirsanov.

20 THE WITNESS: I didn't -- I didn't hear the  
21 question.

22 BY MR. KIRSANOV:

23 Q Mr. Davis, do you know the liquidation for your Earn  
24 claim on your CEL tokens?

25 MR. MCCARRICK: Objection, Your Honor.

1 THE COURT: Sustained.

2 THE WITNESS: Eighty-one cents.

3 THE COURT: Sustained.

4 BY MR. KIRSANOV:

5 Q Mr. Davis, do you think you are receiving fair value in  
6 comparison to your Earn from your custody class?

7 MR. MCCARRICK: Objection, Your Honor.

8 THE WITNESS: No, I do not.

9 BY MR. KIRSANOV:

10 Q Mr. Davis, are you aware of deactivation day pricing?

11 A Please explain it to me what it means.

12 MR. KIRSANOV: I'd like to open to the plan, Page  
13 3000 -- I'm sorry, Docket 3000 --

14 MR. COLODNY: Objection. He's testifying.

15 THE COURT: Sustained.

16 MR. KIRSANOV: Can we open the plan up to the  
17 witness, please?

18 THE COURT: No. If you wish to cross-examine, you  
19 have to post the exhibits that you wish to use in  
20 examination.

21 BY MR. KIRSANOV:

22 Q Okay. Mr. Davis, have you been intimidated relating to  
23 the CEL token?

24 A Yes, I have.

25 Q Have you been threatened in relation to the CEL token?

1 A Yes, I have.

2 MR. KIRSANOV: I have no further questions, Your  
3 Honor. Thank you.

4 THE COURT: Thank you, Mr. Kirsanov.  
5 Anybody else wish to cross-examine?

6 MR. FRISHBERG: I do. Daniel Frishberg, pro se.

7 THE COURT: Mr. Frishberg, go ahead.

8 CROSS-EXAMINATION OF OTIS DAVIS

9 BY MR. FRISHBERG:

10 Q Mr. Davis, do you recall being in a Twitter Space where  
11 you said in reference to me that, quote, "Motherfuckers will  
12 hunt you down."

13 A Play the recording. I don't recall that.

14 MR. FRISHBERG: Your Honor, may I admit the  
15 recording into evidence?

16 MS. CORNELL: Your Honor, this is Shara Cornell,  
17 with the Office of the United States Trustee. I object to  
18 the relevance and hearsay.

19 THE COURT: Yeah. Sustained.

20 MS. CORNELL: Thank you.

21 THE COURT: Mr. Frishberg --

22 MR. FRISHBERG: No further questions.

23 THE COURT: Mr. Frishberg, let me just say this.

24 There have been, in my view, inappropriate things that have  
25 been said, directed at creditors, directed at the creditors'

1 committee counsel, directed at the Court, directed at the  
2 debtor's counsel.

3 On several occasions I've contacted the U.S.  
4 marshals or the U.S. trustee to report episodes. I think at  
5 this stage, and I know it occurred. I think it's  
6 unfortunate. I think feelings were very high. People lost  
7 a lot of money. People felt deceived. And it can't excuse  
8 what I perceive to be serious, inappropriate behavior in  
9 connection with a bankruptcy case.

10 What I'd like to do, Mr. Frishberg, is try and  
11 keep this going forward directed at the issues that the  
12 Court is going to have to resolve. So I understand your  
13 strong feelings, Mr. Frishberg. I'm aware of things that  
14 happened in the past. I want to try and keep it on the  
15 scope of the direct examination and cross-examination. So  
16 I'm going to sustain my own objection to that, Mr.  
17 Frishberg. But if there are other questions you want to ask  
18 that go to the testimony you've heard, I'll certainly permit  
19 that.

20 MR. FRISHBERG: I do not. Thank you, Your Honor.

21 THE COURT: Thanks, Mr. Frishberg.

22 Is there anybody else who wishes to examine the  
23 witness, Mr. Davis?

24 MR. IOVINE: Yes, Mr. -- Judge Glenn. I'm sorry.  
25 Jason Iovine, pro state creditor.



1 THE COURT: Okay. Go ahead, Mr. Iovine.

2 CROSS-EXAMINATION OF OTIS DAVIS

3 BY MR. IOVINE:

4 Q Mr. Davis, good afternoon.

5 A Good afternoon, sir.

6 Q Real quick questions. Was CEL token able to be used  
7 outside of Celsius?

8 A Yes.

9 Q Do you recall which platforms allowed this?

10 A FTX, OKX and I believe Gate.io post-petition.

11 Q Do you remember any decentralized platform finance  
12 platforms that allowed it?

13 A Uniswap was the main one.

14 Q Do you recall (indiscernible) or (indiscernible)?

15 A Yes.

16 Q And what were you able to do, if you know, with CEL  
17 token on those platforms?

18 A I think you can post your CEL token as collateral on  
19 those platforms.

20 Q So CEL token wasn't dependent strictly on Celsius?

21 A No. You can also use it in DeFi.

22 MR. IOVINE: Thank you. All my questions.

23 THE COURT: Thank you very much, Mr. Iovine.

24 Anybody else? All right. Thank you very much, Mr. Davis.

25 So I will consider -- again your direct examination wasn't

1 really in the proper form. I will evaluate, I'm going to  
2 admit it in evidence and give it such weight as I think it's  
3 entitled to under the circumstances, and I appreciate your  
4 cross-examination.

5 The issue arose about you sitting for a  
6 deposition, and the Court had entered an order. I'm pleased  
7 that you did cooperate and that your deposition was taken.  
8 And thank you for your testimony and your statements. All  
9 right.

10 MR. DAVIS: You are very welcome, Your Honor.

11 THE COURT: Okay. Mr. Ubierna, you're next.

12 MR. UBIERNA DE LAS HERAS: Good afternoon, Your  
13 Honor. Can you hear me okay?

14 THE COURT: Yeah, I can hear you okay, Mr.  
15 Ubierna.

16 MR. UBIERNA DE LAS HERAS: Okay. Victor Ubierna  
17 de las Heras, pro se creditor. I don't have any evidentiary  
18 presentation for today, Your Honor. I only restate what I  
19 said at the opening statement of the confirmation hearing,  
20 and I don't have anything for today. Thank you for your  
21 time.

22 THE COURT: Thank you very much, Mr. Ubierna. All  
23 right. The next on my list are the securities plaintiffs.  
24 I have them listed separately. But who is their counsel?

25 MR. KHEZRI: Good afternoon, Your Honor. Phil

1 Khezri, Lowenstein Sandler, on behalf of the securities  
2 plaintiffs.

3 THE COURT: Thanks, Mr. Khezri.

4 MR. KHEZRI: I'm going to be very brief.

5 THE COURT: Go ahead.

6 MR. KHEZRI: We filed a limited objection, which  
7 appears at Docket Number 3544. Securities plaintiffs appear  
8 to fall within the class of subordinated claims under  
9 510(b). Limited objection seeks to preserve rights to  
10 pursue recovery from Side C coverage of any applicable  
11 insurance policies. We are in discussion with the debtors  
12 about adding language to the confirmation order to resolve  
13 the objection. So hopefully, this can just be kicked out  
14 pending resolution.

15 THE COURT: All right. Thanks very much, Mr.  
16 Khezri. All right. David Schneider? Mr. Schneider, are  
17 you on Zoom?

18 MR. SCHNEIDER: Can you hear me now, sir?

19 THE COURT: Okay, Mr. Schneider. I can hear you.  
20 Go ahead.

21 MR. SCHNEIDER: Okay. I'm sorry. I'm on phone  
22 using my phone.

23 THE COURT: Okay. Go ahead. That's all right.

24 MR. SCHNEIDER: David Schneider, and -- creditor.  
25 And I would also like to request to be moved to a later

1 order position because --

2 THE COURT: I'm sorry. I couldn't hear that. I  
3 couldn't hear that, Mr. Schneider. Just say that again. I  
4 heard you were requesting something, but I couldn't hear  
5 what.

6 MR. SCHNEIDER: I would also like to request to be  
7 moved to a later order position as far as presenting my  
8 testimony -- presenting my exhibit --

9 MR. MCCARRICK: TJ McCarrick, Kirkland & Ellis, on  
10 behalf of the debtors. I think Mr. Schneider is asking to  
11 be put later in the order.

12 THE COURT: Okay. Mr. Schneider, I'll put you at  
13 the end. It'll give you a little more time. Okay.

14 MR. SCHNEIDER: Thank you very much, Your Honor.

15 THE COURT: All right. Mr. Phillips?

16 MR. PHILLIPS: Yes, Your Honor. Well, I guess I'd  
17 prefer -- I thought I would go tomorrow, and so I'd prefer  
18 to do later as well, but if necessary, I'll proceed. I did  
19 put in my request to appear remotely at Docket Number 3648.

20 THE COURT: All right. And you were deposed?

21 MR. PHILLIPS: I was deposed yesterday for four  
22 hours.

23 THE COURT: Okay.

24 MR. PHILLIPS: By both debtor and committee  
25 counsel.

1 THE COURT: Well, let me ask the debtor and the  
2 committee, is there any objection to Mr. Phillips testifying  
3 remotely?

4 MR. WEEDMAN: Your Honor, I think with the same  
5 reservations that we discussed earlier, not necessarily to  
6 the remoteness, but we do have overall objections to his  
7 declaration being admitted into evidence. We think it's  
8 just a wholesale adoption of his argument put into a  
9 declaration form, and so we would -- but we're prepared to  
10 go forward with a cross-examination.

11 THE COURT: I'll give it such weight as I think  
12 it's entitled to. We always have this issue about mixing  
13 argument and evidence. But go ahead, Mr. Phillips, if you  
14 want to --

15 MR. WEEDMAN: Your Honor, if I may just --

16 THE COURT: Well, let Mr. Phillips. Just be brief  
17 and summarize what your objections are and then we'll permit  
18 -- are you going to cross-examine?

19 MR. WEEDMAN: We are, Your Honor. I was just  
20 going to note that I think counsel for Perella Weinberg was  
21 going to dial in when he knew that Mr. Phillips was joining.  
22 We've kind of gone a lot faster than we expected.

23 THE COURT: Yeah.

24 MR. WEEDMAN: So we --

25 THE COURT: I'll tell you what. I have on my

1 watch 3:59, so 4:00. Let's take a recess until 4:15.

2 MR. WEEDMAN: Thank you, Your Honor.

3 THE COURT: Okay, and then we'll -- so, Mr.

4 Phillips, we'll be back and you can remain on the line.

5 We're taking a break of 15 minutes, and you can contact

6 Perella. Okay?

7 MR. WEEDMAN: Thank you, Your Honor.

8 MR. PHILLIPS: Yes, Your Honor. Thank you very

9 much.

10 THE COURT: Thank you.

11 (Recess)

12 THE COURT: Please be seated. All right. Are we  
13 ready to proceed with Mr. Phillips's examination?

14 MR. WEEDMAN: Yes, Your Honor.

15 THE COURT: All right. Mr. Phillips, do you want  
16 to briefly -- I mean, I'm going to admit your direct  
17 testimony. Let me ask you, are you a lawyer, Mr. Phillips?

18 MR. PHILLIPS: No, sir.

19 THE COURT: All right. I'm trying to bend over  
20 backwards not to strictly apply the rules of evidence. I'm  
21 admitting things in evidence where I think the substance is  
22 important to be heard. I'll give it such weight as I think  
23 is appropriate. You've been deposed. So I'll give you a  
24 chance if you want to say anything briefly, and then I'll  
25 turn it over for cross-examination.

1 MR. PHILLIPS: Thank you, Your Honor. I am a  
2 little confused, Your Honor, about testifying to my  
3 declaration as opposed to providing argument, how you want  
4 to handle that.

5 THE COURT: Well, I'll give you a chance if you  
6 want to summarize. Some of what was in your declaration is  
7 really argument in a sense. I'll give you a chance if you  
8 want to just summarize your argument and then in terms of  
9 cross-examination, I'll turn it over to counsel to the  
10 committee for it. But before I ask for cross-examination, I  
11 thought I would give you a chance, if there's anything that  
12 you want to raise.

13 MR. PHILLIPS: Thank you, Your Honor.

14 THE COURT: Did we swear Mr. Phillips?

15 CLERK: I did not.

16 THE COURT: Let's do this. Let me have you sworn  
17 at this point so I don't forget. Karen, our ECRO operator,  
18 keeps me on the straight and narrow to make sure that I  
19 always make sure that all witnesses have been sworn. So if  
20 you would raise your right hand, Karen is going to go ahead  
21 and administer the oath.

22 CLERK: Do you solidly swear or affirm that all  
23 the testimony you're about to give before this Court is the  
24 truth, the whole truth and nothing but the truth?

25 MR. PHILLIPS: Yes.

1 THE COURT: All right. Thank you, Mr. Phillips.  
2 All right. So is there anything you wanted to summarize  
3 before? And I have your statement. I've read it. But if  
4 there's anything that you wanted to add orally, I'll permit  
5 you to do that.

6 MR. PHILLIPS: Well, just in brief outline, if I  
7 could, I did file my original objection at 3548 and 3557 on  
8 the docket, the remote request at 3648. I added some  
9 amended exhibits which I used in cross at 3706. I then  
10 filed a declaration at 3758, which I'd like to submit into  
11 evidence. And I also filed a rebuttal argument that relied  
12 in part on the declaration at 3705. I filed the rebuttal at  
13 3767 and that relied in part on the declaration at 3705. I  
14 have not responded to all the exhibits that were filed late  
15 last night by both the debtor and UCC. And I do have  
16 objections to some of the UCC exhibits, should they be used.

17 THE COURT: All right.

18 MR. PHILLIPS: So my fundamental argument is this,  
19 right, which is that the professionals in this case who are  
20 representing the committee, both White & Case and Perella,  
21 should be accountable. And I believe that there's evidence  
22 of misconduct in both the appointment of the litigation  
23 oversight committee as well as the board.

24 And I think that given especially the speed at  
25 which this confirmation hearing is proceeding and the



1 limited amount of discovery that was available, especially  
2 since some of the facts and circumstances did not become  
3 apparent until post the discovery schedule that was laid out  
4 at the beginning of the hearing, which really it was laid  
5 out, in my opinion, to support the CEL valuation argument  
6 that we just heard, that complete discovery and  
7 investigation wasn't able to occur.

8           So therefore, those claims should be preserved  
9 post the effective date, that an appropriate fiduciary  
10 should be unable to prosecute those behaviors, those claims  
11 essentially on behalf of the UCC, the committee itself and  
12 that I'd propose two separate ones that for that fiduciary  
13 would either be a subset of the litigation oversight  
14 committee who is unconflicted and not a witness. And that  
15 would be the three members, Mr. Adler, Mr. Crews and Ms.  
16 O'Connor or that the U.S. trustee would appoint such a  
17 fiduciary, that if Your Honor saw fit, given to the  
18 circumstances of the misconduct, that he would remove Mr.  
19 Aidoo from the board of NewCo and vacate the appointments  
20 essentially from the board of NewCo of Mr. Aidoo and of Mr.  
21 Jindal, Mr. Uzzi and Mr. Noyes from the litigation oversight  
22 committee.

23           And then the separate part of my declaration,  
24 which relies in part on my qualification, is regarding the  
25 valuations that were presented during the debtor's case by

1 experts from three different firms, Mr. Kielty on behalf of  
2 Centerview, Mr. Cohen on behalf of behalf of Stout Risius  
3 Ross and by Mr. Campagna on behalf of Alvarez & Marsal. And  
4 in my opinion, their valuation of the orderly winddown  
5 versus NewCo was in error. And I provided an updated  
6 valuation of NewCo, showing that its recovery percentage is  
7 lower than that of the orderly winddown scenario, both of  
8 which scenarios are included under the plan, and thus that  
9 the debtors and committee should be directed to carry out  
10 their fiduciary duties and evaluate the current value of  
11 both the recovery of NewCo and orderly winddown and to make  
12 the proper determination to toggle through orderly winddown  
13 because it's important to note that all the valuation work  
14 that has been done to date and presented in the disclosure  
15 statement, which was approved but has some inadequacies, as  
16 I will point out.

17 But I did not object to it at the time, but was  
18 done as of a stale valuation date of May 31, 2023, which was  
19 neither current with the disclosure statement approval,  
20 which was late August, nor is it current now, especially  
21 true in light of the volatility, for example, of Bitcoin  
22 Microsoft prices, which are the key comp set that Mr. Kielty  
23 used in evaluating (indiscernible). So that's my brief  
24 summary, Your Honor.

25 THE COURT: Okay. All right. All right. Cross-

1 examination.

2 MR. WEEDMAN: Thank you, Your Honor. Your Honor,  
3 Joshua Weedman, White & Case LLP, on behalf of the  
4 committee. May I approach, Your Honor?

5 THE COURT: Yes, you can. Thank you.

6 CROSS-EXAMINATION OF RICHARD PHILLIPS

7 BY MR. WEEDMAN:

8 Q Good afternoon, Mr. Phillips.

9 A Good afternoon, Mr. Weedman.

10 Q You applied to be on the board of NewCo, right?

11 A Yes.

12 Q And you submitted your application well in advance of  
13 the process being formally announced, right?

14 A I don't remember exactly the formal date of  
15 announcement, but I started expressing my interest  
16 (indiscernible) I believe of this year.

17 Q I'm sorry. I couldn't hear you. Could you please  
18 repeat that?

19 A Sure. I don't remember the date of the "formal"  
20 announcement of the process because I'm not sure there was a  
21 date of formal announcement of when the process was  
22 launched, but I believe I submitted my, you know, and  
23 started indicating interest in March of this year.

24 Q Okay. In March of 2023, correct?

25 A Correct.

1 Q And when you submitted your application, you submitted  
2 it pseudonymously, right? Under a pseudonym?

3 A Yes.

4 Q And you were told that the use of a pseudonym on your  
5 resume was a problem, right?

6 A Well, the committee members who co-chaired it knew who  
7 I was because they were able to identify my LinkedIn profile  
8 from the pseudonymous resume.

9 Q And my question was, you were told that the use of a  
10 pseudonym was a problem for your resume, correct?

11 A That is what Mr. Colodny told me, yes.

12 Q And eventually you did send a resume with your name,  
13 correct?

14 A Yes.

15 Q And that was in around June or July of 2023, right?  
16 Correct.

17 Q And you've never previously served on the board of a  
18 publicly traded company, right?

19 A Correct.

20 Q But you were still interviewed for a seat on NewCo's  
21 board, right?

22 A Yes, on approximately August 30th.

23 Q That was my next question. You were interviewed on  
24 August 30th, right?

25 A I just said so.

1 Q And that interview was approximately one hour?

2 A Yes, it was.

3 Q And you recall being asked questions during that  
4 interview, right?

5 A I do.

6 Q And you vaguely recollect that you were told that you  
7 were being asked the same series of questions that were  
8 being asked of all board applicants, right?

9 A Well, I believe what occurred in the depo, and I'm sure  
10 you have the testimony, is you stated that there were five  
11 standard questions that were asked, and that I was asked  
12 that. And I couldn't recall that I was specifically asked  
13 about five standard questions that were there. But I  
14 vaguely recall being told that I was being asked similar  
15 questions. But there were clearly some questions that were  
16 not asked of all applicants.

17 MR. WEEDMAN: And if I could ask Mr. Lopez to  
18 please bring up UCC Exhibit 237.

19 THE WITNESS: Objection, Your Honor.

20 THE COURT: You can't object to his putting up an  
21 exhibit on the screen. When he asks you some questions,  
22 we'll see if there's an objection.

23 THE WITNESS: Okay.

24 MR. WEEDMAN: And Your Honor, this is in your  
25 binder under Tab 3C, as in Charlie. I'm sorry, 3D.

1 THE COURT: Okay.

2 BY MR. WEEDMAN:

3 Q And Mr. Phillips, you see on this is an email from an  
4 email address [REDACTED]. Do you see that?

5 A Yes.

6 THE WITNESS: And I still object to this email  
7 being brought here, Your Honor.

8 BY MR. WEEDMAN:

9 Q I'm still asking some questions about this, Mr.  
10 Phillips. Is that your email address?

11 A Yes.

12 MR. RICHARDS: Your Honor, I object. He's not  
13 aware of this exhibit.

14 THE COURT: Overruled. Go on with your questions.

15 BY MR. WEEDMAN:

16 Q And this is an email that you sent on August 30, 2023  
17 at 6:12 p.m. to Aaron Colodny, at White & Case, correct?

18 A That is what it says, so, yes.

19 Q And you remember sending this email, don't you?

20 A Yes.

21 MR. WEEDMAN: Your Honor, I would offer Exhibit  
22 237 into evidence.

23 THE COURT: Any objections?

24 THE WITNESS: Objection. Objection, Your Honor.

25 MR. RICHARDS: I object.

1 THE COURT: What's the objection?

2 MR. RICHARDS: He's not (indiscernible) this  
3 exhibit.

4 THE COURT: One at a time. First, Mr. Richards.  
5 Mr. Phillips, I'm sorry.

6 MR. PHILLIPS: Thank you, Your Honor. This  
7 applies to the whole series of emails that Mr. Weedman may  
8 or may not introduce here, in that they're out of context.  
9 And so I would like to introduce the full email train,  
10 thread that includes all the emails and the particular that  
11 that one is taken from.

12 THE COURT: You acknowledge this is an email that  
13 you sent to Mr. Colodny on Wednesday, August 30, 2023, at  
14 6:12 p.m.; is that correct?

15 THE WITNESS: Yes, and he responded to at 10:23  
16 the same night.

17 THE COURT: Objections is overruled. It's in  
18 evidence.

19 (Exhibit 237 admitted into evidence.)

20 MR. WEEDMAN: Thank you.

21 BY MR. WEEDMAN:

22 Q And, Mr. Phillips, in this email to Mr. Colodny, of  
23 White & Case, you said, thanks for taking the time to  
24 interview me and meet over Zoom. You see that?

25 A Yes.

1 Q And you also say, I appreciate the ups you gave me. Do  
2 you see that?

3 A Yes.

4 Q And when you said appreciate the ups, you were thanking  
5 Mr. Colodny for speaking favorably about you during the Zoom  
6 meeting. Isn't that correct?

7 A Yes.

8 Q And so, as of August 30, 2023, you thought Mr. Colodny  
9 had been speaking favorably about you, correct?

10 THE WITNESS: Misstates the testimony. So I'll  
11 object on that ground.

12 THE COURT: Can you answer the question yes or no?  
13 The objection is overruled.

14 THE WITNESS: So yes, he did, but it was only  
15 solely on that date.

16 BY MR. WEEDMAN:

17 Q And in fact, you'd had many conversations with Mr.  
18 Colodny before August 30th, correct?

19 A Yes.

20 Q And those had spanned over the course of many months,  
21 correct?

22 A Since probably -- yes.

23 MR. WEEDMAN: Can I ask Mr. Lopez to please bring  
24 up UCC Exhibit Number 236?

25 BY MR. WEEDMAN:



1 Q And, Mr. Phillips, you see this is another email from  
2 your email address, [REDACTED], dated Friday, August  
3 25, 2023, at 10:14 a.m. Do you see that?

4 A Yes.

5 Q And this is another email you sent to Mr. Colodny, of  
6 White & Case, with a subject line, "Good Job and Some Follow  
7 Up." Do you see that?

8 A Yes.

9 Q And you recall sending this email to Mr. Colodny as  
10 well, correct?

11 A Yes.

12 MR. WEEDMAN: Your Honor, I would offer in UCC  
13 Exhibit Number 236 into evidence.

14 THE COURT: Any objections?

15 THE WITNESS: Same objection, that it's part of an  
16 email thread, so I would like to -- can I submit the whole  
17 thread as rebuttal evidence?

18 THE COURT: Well, I take -- I rule one at a time.

19 THE WITNESS: Fair enough.

20 THE COURT: Objection's overruled. It's admitted.  
21 236 is admitted into evidence.

22 (Exhibit 236 admitted into evidence.)

23 BY MR. WEEDMAN:

24 Q And again, Mr. Phillips, this is you on August 25,  
25 2023, telling Mr. Colodny in the first sentence, great job

1 on the spaces. Do you see that?

2 A Yes.

3 Q Is that a reference to Twitter Spaces that Mr. Colodny  
4 had hosted?

5 A Yes.

6 Q And I'm going to direct your attention to the last  
7 paragraph of this email. You say to Mr. Colodny, of White &  
8 Case: Thank you. I really do appreciate all the hard work  
9 you and your team have put into the case. I'm probably one  
10 of the few in the creditor community that truly understand  
11 how much work these engagements are and the sacrifices they  
12 require on the work-life balance front. If we exit prior to  
13 the end of the year, I'll try to get you to a Chargers game  
14 at SoFi, the yolo incentive plan. Think the Chiefs and the  
15 Bills are the final two games, so they could be important  
16 and exciting. Did I read that correctly?

17 A Yes.

18 Q And again, this is you on August 25th thanking Mr.  
19 Colodny for what you've described as a good job and all the  
20 hard work that he put into the case, correct?

21 A Correct.

22 Q Shortly after these two emails that we just reviewed,  
23 you learned you weren't selected for the NewCo's board,  
24 correct?

25 A Define shortly.

1 Q How about September 4, 2023?

2 A Yes.

3 Q And you learned who had been selected, correct?

4 A Yes.

5 Q And you were upset learning that the board included  
6 someone named Emmanuel Aidoo over you, correct?

7 A Not at that time. I would not characterize, you know,  
8 I would --

9 THE WITNESS: Well, again, object, misstates  
10 testimony. I would more characterize my feeling at that  
11 time as disappointed that I was not selected.

12 BY MR. WEEDMAN:

13 Q I'm going to show you what is marked as UCC Exhibit  
14 Number 238. Mr. Phillips, this is an email chain. If we  
15 scroll down to the bottom, it's an email that you sent again  
16 from your email address, [REDACTED], on September 4,  
17 14, 2023 at 3:48 p.m., to Aaron Colodny, Gregory Pesce,  
18 Keith Wafford, Scott Duffy, and Thomas DiFiore. Do you see  
19 that?

20 A Yes.

21 Q And you recall sending this email, correct?

22 A Yes.

23 Q And the subject line of this email says "Board  
24 Diversity Requirements UCC Only Needs ONE," and one is in  
25 all caps, correct?

1 A Yes, and I appreciate you increasing the magnification  
2 so I can read it.

3 Q And by one in all caps, you were referring to a diverse  
4 member of the board, correct?

5 A Yes.

6 Q And you sent this email because you were worried that  
7 Mr. Aidoo had been selected for diversity requirements,  
8 correct?

9 A No.

10 Q I'm sorry. You said that's not -- are you saying no to  
11 that?

12 A I did.

13 Q Can I please direct you to your deposition that was  
14 taken yesterday?

15 MR. WEEDMAN: I'd ask Mr. Lopez to bring up Mr.  
16 Phillips' deposition, Page 49. And, Your Honor, this is Tab  
17 4 in your binder.

18 THE COURT: I have it open. What line number?

19 MR. WEEDMAN: And I'm going to read, Your Honor,  
20 from Line 6 to 16.

21 THE COURT: Okay.

22 MR. WEEDMAN: And the question, you say --

23 THE COURT: I think you're starting in the wrong  
24 place.

25 MR. WEEDMAN: Oh, I'm sorry. Page 48. Thank you.

1 BY MR. WEEDMAN:

2 Q And so the only thing I couldn't -- I couldn't  
3 understand why and so I thought that they may perceive that  
4 they needed him for diversity requirements. And so I wrote  
5 that, that, you know, because of Mr. Genoot meeting those  
6 diversity requirements, they didn't need anybody else as  
7 long as they kept Ms. LaPuma. And I was not aware that  
8 there was another director, apparently, that also met  
9 diversity requirements.

10 Do you see that?

11 A I do.

12 Q Is that testimony that you gave under oath yesterday?

13 A It is. And also I don't see the prior transcript, so I  
14 don't know if there was an objection. I saw that there was  
15 an objection in the other page. I don't know if there was  
16 an objection on the record prior to this statement.

17 Q Mr. Phillips, you agree you did not participate in the  
18 committee's deliberations regarding the board composition?

19 A I agree, yes.

20 Q I'm sorry. You cut out.

21 A I said I do agree with that, yes.

22 MR. WEEDMAN: And Your Honor, I would like to move  
23 UCC Exhibit 238 into evidence.

24 THE WITNESS: I'm sorry, Your Honor. For  
25 clarification, is that the whole transcript or what is UCC

1 Exhibit 238?

2 THE COURT: He hasn't moved -- he moved the  
3 emails. UCC 238 was an email chain.

4 THE WITNESS: The August 30th email?

5 THE COURT: The top of the list says Email 3, but  
6 this is ECF 3706, Pages 9 and 10 are what are included here.

7 THE WITNESS: Okay. Thank you, Your Honor.

8 THE COURT: All right. Are there any objections?

9 All right. Exhibit 238 is admitted into evidence.

10 (Exhibit 239 admitted into evidence.)

11 MR. WEEDMAN: Thank you, Your Honor.

12 BY MR. WEEDMAN:

13 Q Shortly after you found out that you had not been  
14 selected for the NewCo board, you filed a limited objection  
15 on September 22nd, correct?

16 A I believe it was September 21st when I submitted it,  
17 but it appeared on the docket on September 22nd.

18 Q And one of the objections that you lodged in your  
19 limited objection from September related to White & Case and  
20 Perella Weinberg's conduct in the board selection process,  
21 correct?

22 A Yes.

23 Q And in particular you object to the exculpation of  
24 White & Case and Perella Weinberg, correct?

25 A Correct.

1 Q And that's because you believed that creditors,  
2 including yourself, should be able to sue those two  
3 companies regarding the board selection process, correct?

4 A And the fiduciary appointed on behalf of the UCC goes  
5 out of business on the effective date.

6 Q And you agree with me that you probably would have not  
7 filed that objection if you had been selected to the Board,  
8 right?

9 A Yes.

10 MR. WEEDMAN: I have no further questions, Your  
11 Honor.

12 THE COURT: Any other examination?

13 MR. BRIER: Yes, Your Honor.

14 THE COURT: Okay, Ms. Brier.

15 MS. BRIER: Grace Brier, Kirkland & Ellis, on  
16 behalf of Debtors.

17 CROSS-EXAMINATION OF RICHARD PHILLIPS

18 BY MS. BRIER:

19 Q Good afternoon, Mr. Phillips.

20 A Good afternoon, Ms. Brier.

21 Q I saw you pretty recently. Welcome.

22 A We did.

23 Q Mr. Phillips, you submitted a ballot in this case  
24 regarding the plan, correct?

25 A I did.

1 Q And you voted to approve the plan when you submitted  
2 your ballot, correct?

3 A I did.

4 Q And you submitted that in September of 2023?

5 A I did. I submitted that ballot either the last day or  
6 the day before the end of the voting period, on the -- I  
7 think it was September 22nd.

8 Q I would like to talk about some of your early  
9 involvement in this case. You signed an NDA to listen in on  
10 the auction proceedings, right?

11 A I did.

12 MS. BRIER: Your Honor, permission to approach  
13 with Celsius Exhibit 118?

14 THE COURT: Sure.

15 MS. BRIER: Mr. Lopez, if you could please pull  
16 that up.

17 THE COURT: Thank you.

18 MS. BRIER: All right. And if you could please  
19 zoom in on that first tweet, Mr. Lopez.

20 BY MS. BRIER:

21 Q Mr. Phillips, this is a tweet from your. Your Twitter  
22 handle is @cryptoyolo7, correct?

23 A Yes.

24 Q And in May 2023, you tweeted, "It's official. The  
25 winner is @farenheithldg @arrington. Significant work to



1 improve the value of @CelsiusNetwork mining operations for  
2 #Celsians @CelsiusUCC and reductions in overall management  
3 fees, #auctionswork." Right?

4 A Yes.

5 Q Now, as a result of the things that you learned and saw  
6 while observing the auction, you thought the Celsius auction  
7 involved significant work to improve the value of the  
8 Celsius Network mining operations, correct?

9 A I would rephrase that. I think that taking a 140-  
10 character tweet does not summarize my thoughts. It just  
11 says the length of 140 characters. So first off, the  
12 transcript was essentially public at that point. The  
13 transcript was publicized. And I referred to the Stretto  
14 filing here. So I based it essentially on the Stretto  
15 filing, not on listening in on the auction. But it was  
16 clear that the resulting final bid as described in that  
17 Stretto filing was better than the stalking horse bid that  
18 existed at the beginning of the auction process from  
19 NovaWulf and that's why I tweeted this.

20 Q And you tweeted on May 25th, 2023, "Significant work to  
21 improve the value of the mining operations." True?

22 A Yes.

23 MS. BRIER: Your Honor, permission to move into  
24 evidence Celsius Exhibit 118.

25 THE COURT: I'm sorry, say it again.

1 MS. BRIER: Celsius Exhibit 118, the tweet.

2 Permission to move into evidence.

3 THE COURT: All right. Any objections?

4 THE WITNESS: That's this tweet, correct, Ms.  
5 Brier?

6 THE COURT: Yes, this tweet. Exhibit 118 is  
7 admitted in evidence.

8 (Exhibit 118 admitted into evidence)

9 BY MS. BRIER:

10 Q And, Mr. Phillips, as a result of the things that you  
11 learned and you saw and you knew about the auction, you  
12 tweeted, "#AuctionsWork". Right?

13 THE WITNESS: Objection. Misstates testimony.

14 MS. BRIER: My question is did you tweet  
15 "#AuctionsWork" based on what you knew and learned and saw  
16 about the auction?

17 THE WITNESS: Objection. Misstates testimony.

18 THE COURT: Could you just answer the question,  
19 Mr. Phillips?

20 THE WITNESS: Sure.

21 THE COURT: You can answer it yes or no.

22 BY MS. BRIER:

23 A Well, no based on how she phrased it.

24 Q All right. On --

25 A I tweeted "Auctions Work" based on the two public

1 filings, one post-auction and the NovaWulf stalking horse  
2 pre-auction.

3 Q So let's do it this way. Based on the public filings  
4 that you saw, you tweeted #AuctionsWork on May 25th, 2023,  
5 right?

6 A Yes.

7 Q Now, since that time, May 25th, 2023, you've applied to  
8 be a member of the NewCo board, right?

9 THE WITNESS: Asked and answered.

10 THE COURT: Mr. Phillips.

11 THE WITNESS: Yes.

12 THE COURT: Look, let's stop fencing. We're going  
13 to get through this a lot faster if she asks questions, you  
14 can answer the questions. Okay?

15 BY MS. BRIER:

16 Q I'll ask that again. You applied to serve as a member  
17 of the NewCo board since this time in May 25th, 2023, right?

18 A Yes.

19 Q And you were not selected for the board, right?

20 A Yes.

21 THE COURT: I mean, that's established already.  
22 Let's move on.

23 BY MS. BRIER:

24 Q Now, after you weren't selected, you filed some  
25 objections. And I would like to talk about those. Mr.

1 Phillips, you submitted a valuation to the Court as part of  
2 a recent declaration. Now, that valuation wasn't included  
3 in your original declaration, true?

4 A Yes.

5 Q And you're not offering an expert opinion in this  
6 matter, correct?

7 A No.

8 Q But you offered some valuation statements in your  
9 declaration that you filed with the Court, correct?

10 A Yes. But I am an expert.

11 Q Your testimony is that you're an expert?

12 A Absolutely.

13 THE COURT: Well, you haven't been -- you didn't  
14 lay the foundation for expertise. I'm not hearing the  
15 expert opinions. Go on with your examination. He's not  
16 testifying as an expert.

17 THE WITNESS: Your Honor?

18 THE COURT: No. I'm sorry. You did not -- you're  
19 being examined as a fact witness. You put in your  
20 declarations as a fact witness. I understand your  
21 background with Houlihan Lokey and others. You're not  
22 testifying here as an expert. Ask questions of the witness  
23 and let's get answers and let's move on.

24 MS. BRIER: Thank you, Your Honor. In Tab 2 of  
25 the binder that the UCC handed up, which is also Celsius

1 Exhibit 81 -- I'm happy to bring up a copy, but I think that  
2 it's the exact same document.

3 THE COURT: This is in the (indiscernible) binder?

4 MS. BRIER: Oh, no. This is a copy of Mr.  
5 Phillips declaration. I'll just bring this up. And, Mr.  
6 Lopez, if you could please pull up Exhibit 81. And turn to  
7 the next page.

8 BY MS. BRIER:

9 Q Mr. Phillips, this is the declaration you filed,  
10 correct?

11 A Yes.

12 Q And on the last page, Page 28, you offer a valuation  
13 hearing, right?

14 A Yes.

15 Q And in that valuation, you take two discounts to the  
16 total NewCo number of \$1.2 billion, correct?

17 A Can you repeat the question, please?

18 Q Sure. That was a confusing one. You take two  
19 different --

20 THE COURT: Let's make sure I'm -- you're looking  
21 at Exhibit E, the last page of this page, 28 of 28?

22 MS. BRIER: Exactly.

23 THE COURT: All right. Go ahead.

24 BY MS. BRIER:

25 Q And, Mr. Phillips, this is a valuation that you

1       yourself prepared, right?

2       A       Yes.

3       Q       And what you did was you took two different discounts  
4       to the total valuation that was included in the disclosure  
5       statement for NewCo at \$1.2 billion, correct?

6       A       Yes.

7       Q       And one of those discounts was a Holdco discount at 7.5  
8       percent, right?

9       A       Yes.

10      Q       And you took that Holdco discount because, as you say,  
11      this is a sum of the parts number, right?

12      A       Yes.

13      Q       And that's the only reason you apply that 7.5 percent  
14      number here, right?

15      A       No.

16      Q       Is it your testimony that you apply a 7.5 percent  
17      discount for any other reason than the fact that it's a sum  
18      of the parts number?

19                   THE WITNESS:  It's not a yes/no answer, Your  
20      Honor.

21                   THE COURT:  Go ahead and explain, Mr. Phillips.

22                   THE WITNESS:  Sure.

23      BY MS. BRIER:

24      A       So a holdco discount is appropriate because it is a sum  
25      of the parts.  7.5 percent was the factor I used because

1 that was in my (indiscernible), however you want to  
2 characterize my judgement, an appropriate discount factor  
3 given the normal range of holdco discounts for the facts and  
4 circumstances (indiscernible).

5 Q Now, however you reached the 7.5 percent discount, the  
6 only reason you're buying a holdco discount at all is  
7 because it's a sum of the parts number, right?

8 A Yes.

9 Q And you also apply a 30 percent discount, correct?

10 A Yes.

11 Q And you apply that 30 percent discount because, as you  
12 explain in your declaration, the voting results of the plan  
13 result in a 30 percent discount, correct?

14 A Yes.

15 Q You have no other valuation or independent reason to  
16 reach that 30 percent number, right?

17 A Correct.

18 Q You pulled it directly out of the plan?

19 A Out of the plan and voting results.

20 Q Correct. And you apply that 30 percent discount across  
21 the entire total, that \$1,248 number, correct?

22 A Yes.

23 Q Now, you don't know why --

24 THE COURT: It's billions.

25 MS. BRIER: Yes.

1 THE COURT: \$1,248,000,000.

2 MS. BRIER: Thank you for the clarification, Your  
3 Honor.

4 THE COURT: Everything is adding thousands to.

5 MS. BRIER: For purposes of the record, this 1,248  
6 number I'm referencing is in millions on this sheet. So I  
7 will be more clear next time. Thank you.

8 BY MS. BRIER:

9 Q Now, Mr. Phillips, you don't know why any single  
10 creditor voted to elect either liquid crypto or equity,  
11 correct?

12 A No.

13 Q But you applied the results of the plan to apply this -  
14 -

15 THE COURT: Wait. I think there's an ambiguity.  
16 You asked if that's correct and he said no.

17 MS. BRIER: Thank you, Your Honor.

18 BY MS. BRIER:

19 Q You have no knowledge as to why any other creditor  
20 voted to select liquid crypto or equity, right?

21 A No.

22 THE COURT: You have to answer the question if you  
23 can. No comment is not an --

24 THE WITNESS: I --

25 THE COURT: Yes, no, I don't know. But you can't



1 --

2 THE WITNESS: Your Honor, I said no. I said no  
3 twice.

4 BY MS. BRIER:

5 Q So just to be clear, there are other reasons people  
6 could have selected liquid crypto or NewCo equity other than  
7 a valuation opinion that you offered here, right?

8 A Yes.

9 THE COURT: That was the point.

10 MS. BRIER: Thank you, Your Honor.

11 BY MS. BRIER:

12 Q Now, you apply the 7.5 percent discount and the 30  
13 percent discount to the total. You don't make any  
14 distinctions among the three component parts, correct?

15 A Correct.

16 Q Now, you would agree with me that the \$450 million  
17 number there is liquid cryptocurrency, right?

18 A I don't --

19 THE COURT: You're talking about staking as  
20 opposed to value.

21 MS. BRIER: Yes, Your Honor.

22 THE COURT: I want to be sure we have a clear  
23 transcript. The \$450 million number is listed for staking  
24 of book value. Is that what you're referring to?

25 MS. BRIER: Yes, Your Honor. And at this time, it

1 is liquid cryptocurrency.

2 THE COURT: Yes.

3 BY MS. BRIER:

4 A Yes -- I'm sorry. Was there a question on the floor or  
5 not?

6 Q I'll re-ask it. You would agree with me that that \$450  
7 million number there is at this moment liquid  
8 cryptocurrency, correct?

9 A Yes.

10 Q And you apply the 30 percent discount and the 7.5  
11 percent discount to a total that includes it without making  
12 any distinction for that number, correct?

13 A Correct.

14 THE COURT: Let me ask you this, Mr. Philips. How  
15 did you arrive at the 7.5 percent reduction for conglomerate  
16 discount and the 30 percent initial market capitalization?  
17 Because you're applying those numbers across the board  
18 whether it's staking at book value, which is essentially  
19 it's liquid crypto. You're applying those discounts to the  
20 full numbers and not simply to particular categories. Why  
21 did you do that?

22 THE WITNESS: Yes, Your Honor. I mean, that's the  
23 way it's done. There is no holdco/conglomerate discount on  
24 each individual part. The holdco conglomerate discount only  
25 exists when someone is doing a sum-of-the-parts type

1 valuation, which is what is attempted in the disclosure  
2 statement by simply adding the three numbers up, which is  
3 what Mr. Campagna testified to in his direct testimony, and  
4 that's inappropriate. And so that's why the holdco  
5 conglomerate discount is applied at the total because that's  
6 the right level (indiscernible) buy it at. And I chose 7.5  
7 percent, which is at the lower end of the common range,  
8 which usually is either five to 15 percent or five to 20  
9 percent because of the similarity of the three types of  
10 businesses or operations that are -- or assets that are  
11 included in the total enterprise.

12 THE COURT: Did you include -- did you make a  
13 comparable company analysis to determine what discount rates  
14 you were going to apply?

15 THE WITNESS: Your Honor, comparable company  
16 analyses are not usually used in holdco conglomerate  
17 discounts. Mr. Kielty --

18 THE COURT: Did you just pick the numbers out of  
19 the air if there are no comparable companies that would  
20 apply such discounts?

21 The Your Honor, there are numerous studies that  
22 establish the holdco conglomerate discounts in the range  
23 that I stated of five to 15 percent or five to 20 percent.

24 THE COURT: Go ahead, Ms. Brier.

25 BY MS. BRIER:

1 Q Mr. Phillips, you include the 30 percent discount and  
2 the 7.5 percent discount and you add them both together,  
3 correct?

4 A Correct.

5 Q And you would agree with me that it's possible that  
6 there's overlap between the two, right?

7 A Yes.

8 Q You don't account for that at all, right?

9 A Correct.

10 Q In your view, Mr. Phillips, it's in the best interest  
11 of the creditors to confirm this plan, correct?

12 A Subject to the modifications that I have suggested,  
13 yes.

14 Q Subject to the limited modifications you suggested, you  
15 agree with me that it's in your view that it's in the best  
16 interest of creditors to confirm this plan, right?

17 A Yes. I think it's time for everyone to get out of  
18 this.

19 Q And you're not offering that it would be better for  
20 creditors to enter a Chapter 7 liquidation than it would be  
21 to confirm the plan, true?

22 A Correct. And I have not done that analysis, although I  
23 did establish on cross that the liquidation value of the  
24 mining business was significantly understated and Mr.  
25 Campagna admitted it was significantly understated by at

1 least a factor of two.

2 Q So, Mr. Philips, the answer to my question is yes.

3 You're not offering the view that there is a -- that it

4 would be better for creditors to enter a Chapter 7

5 liquidation than confirm the plan, true?

6 A Correct.

7 Q Thank you.

8 MS. BRIER: No further questions, Your Honor. I

9 pass the witness.

10 THE COURT: Any other cross-examination?

11 BY MR. SABIN:

12 Q Good afternoon, Mr. Phillips. Jeff Sabin from Venable.

13 I have four quick questions. One, on what date did you

14 submit your ballot?

15 A Your Honor -- sorry, Mr. Sabin, as I said, I believe

16 that a final ballot was submitted either on the final

17 deadline date, which was September 22nd, or on September

18 21st, the day before.

19 Q And was that before or after you filed your initial

20 plan objection?

21 A I don't remember the exact deadlines for each. I

22 believe it might well have been -- I mean, I just don't

23 remember. If I could look at the filing date, I could tell

24 you the answer to that.

25 Q That's okay. I'm just asking your recollection. My

1 third question is did you read the approved disclosure  
2 statement before you voted?

3 A Yes.

4 Q And did you read the ballot and instructions before you  
5 voted?

6 A Yes.

7 Q Thank you.

8 THE COURT: All right. Anybody else wish to  
9 cross-examine? All right.

10 Mr. Phillips, when I've had a witness testify  
11 without counsel, I've usually given them an opportunity to  
12 in effect redirect. We don't use the Q&A format. So if  
13 there are any evidentiary points that you want to raise in  
14 effectively redirect in response to the cross-examination,  
15 now would be the time to do it.

16 MR. PHILLIPS: Yes, Your Honor. I think that with  
17 respect to the two emails that were introduced -- let me get  
18 the right one here. Actually, it was -- I'm sorry, what was  
19 the date of the email that had the (indiscernible)? That's  
20 the one I wanted to put up. Or if you could re-put that one  
21 up. Because the whole spread was on that. And Mr. Weedman  
22 used it.

23 THE COURT: I'm trying to see which ones you're  
24 referring to. So the ones --

25 MR. PHILLIPS: It's on 9/14.

1 THE COURT: What I have is Celsius Exhibit 118  
2 which was the exchange of Twitter messages it looks like.  
3 Well, it's up on the screen now. Go ahead.

4 MR. PHILLIPS: Yeah. And if we could magnify that  
5 top email there, Your Honor?

6 THE COURT: Exhibit 238.

7 MR. PHILLIPS: Yes, thank you. One of the things  
8 that I point out in my rebuttal is essentially what starts  
9 here on the second paragraph and which I will read. "I am  
10 still waiting for anyone on the UCC side, advisor or member,  
11 to explain the observer's duties and responsibilities. The  
12 agreement I sought provided no or unspecified compensation  
13 and the right for NewCo to sue the observer for any number  
14 of reasons. In other words, no upside and high downside.  
15 Please articulate to me the observer's duties and  
16 responsibilities."

17 So I do think that this is something that has  
18 never been responded to by the UCC, yet Mr. Colodny used in  
19 his rebuttal to my objection that the statement that the  
20 board consist of five prepetition -- significant prepetition  
21 creditors which are two board members and three board  
22 observers. But the three board observers have no power. So  
23 I think that that's something that's very telling.

24 I do think that the orderly winddown scenario  
25 needs to be considered much more strongly. I do believe

1 that one of the -- the definition of value -- you can take  
2 that down, please.

3 THE COURT: Let's take the email down so Mr.  
4 Phillips is on the screen.

5 MR. PHILLIPS: Thank you.

6 THE COURT: Go ahead, Mr. Phillips.

7 MR. PHILLIPS: Thank you. I do believe that the  
8 definition of value in any valuation is the price that a  
9 willing buyer and seller would agree to in a transaction. I  
10 think that the ballot, the weighted distribution election,  
11 which had a compelling number of creditors choose more  
12 crypto, over \$1.1 billion in claims toggling for more  
13 crypto, which is over 25 percent of the actual claims in the  
14 case and actually over 80 percent of the people that  
15 participated in the toggle by claim value are quite telling  
16 as to value. And so the 30 percent discount that I applied  
17 to the equity value, the NewCo equity value, is actually  
18 understated if anything because it's clear that there wasn't  
19 a fair market set at 30 percent. And if you were to go to  
20 the disclosure statement, the weighted distribution example  
21 table, which was in my exhibits to my declaration I believe  
22 and is an excerpt from the disclosure table basically showed  
23 that you would get eight percent more value or less value  
24 depending on which way you toggle and assumed essentially an  
25 equal number claims toggling in each direction. Which



1 clearly wasn't the case once the ballot results came in. So  
2 I think that my 30 percent discount is conservative if  
3 anything and is higher.

4 And I would point to three specific actions that  
5 occurred in the month of September that undercut the value  
6 of NewCo stock and contributed to that election being so  
7 lopsided.

8 One was the lack of creditor representation on the  
9 board, which as Mr. Weedman pointed out (indiscernible) on  
10 September 4th posted a disclosure statement but brought in  
11 on a Friday night filing that a lot of creditors don't read.  
12 And also wasn't distributed in the same way that the  
13 disclosure statement was. So that occurred on September  
14 4th.

15 Subsequent to that in the next plan supplement,  
16 which I think was one or two weeks later, again, on a Friday  
17 night, there is the revelation that Fahrenheit had dropped  
18 its initial contribution from \$50 million up front to \$33  
19 million which undercut the price of the stock out of the  
20 gate no doubt because there is less of a stabilization fund  
21 available to stabilize the price upon listing.

22 And thirdly, there seemed to be some kind of board  
23 twitter war between Mr. Arrington and Mr. Dixon and -- that  
24 or -- no, a following, a subsequent plan supplement resigned  
25 from the board in a surprise move, Mr. Arrington did. And

1 he is the lead name investor in the Fahrenheit Group.  
2 Arrington Capital is the lead investor. Mr. Arrington  
3 suddenly resigned from the board and replaced himself with  
4 Ravi Kava. I had no objection to him and is certainly well-  
5 qualified and well within Fahrenheit's rights to put on the  
6 board. But basically said he was doing that because he  
7 disagreed with the board observer process and specifically  
8 the appointment of Mr. Dixon in a board observer role.

9 And so I believe that those all undercut the stock  
10 price significantly and that is why creditors ran and taking  
11 more equity. And a 30 percent discount is the minimum  
12 discount that should be taken to the NewCo equity in the  
13 valuation.

14 THE COURT: All right. Thank you very much, Mr.  
15 Phillips.

16 The next person is Mr. Cassidy, Eric Cassidy. Mr.  
17 Cassidy, are you on Zoom? No response from Mr. Cassidy.

18 The next is Elizabeth Bohon. Ms. Bohon, are you  
19 on? I may be mispronouncing your name, for which I  
20 apologize. No response.

21 Travis Keeney? Mr. Keeney, are you on the line,  
22 on Zoom?

23 Michael Windham?

24 James Johantgen? J-O-H-A-N-T-G-E-N?

25 May I ask whoever is operating the Zoom -- and I

1 know Deanna has left for the day, but I know somebody is.

2 Are you able to tell whether Ms. Bohan, Mr. Keeney, Mr.

3 Windham, or Mr. Johantgen are still on the Zoom connection?

4 CLERK: Good afternoon, Judge. It's Jessica. No,  
5 those entities are not on Zoom.

6 THE COURT: Okay. The next person is Caroline

7 Abruzese, A-B-R-U-Z-E-S-E. Is she on Zoom?

8 CLERK: I do not see her.

9 THE COURT: Okay. Peter Truss? Is Mr. Truss on  
10 Zoom?

11 CLERK: I do not see him, either.

12 THE COURT: Benjamin Dame, D-A-M-E?

13 CLERK: I do not see him, either.

14 THE COURT: Okay. Cathy Lau, L-A-U.

15 CLERK: Ms. Lau is on.

16 THE COURT: All right. Mr. Kirsanov, we are back  
17 to you. Dimitry Kirsanov. Are you still on the line?

18 MR. KIRSANOV: I am indeed.

19 THE COURT: Okay, Mr. Kirsanov, you are up.

20 MR. KIRSANOV: Thank you, Your Honor, for hearing  
21 my concerns.

22 So my concerns primarily revolve around best

23 interests and fair and equitable clauses and the mixed

24 language in the plan along with the concerns of CEL token

25 and other cryptocurrency in the custody class. And the

1 language of deactivation they value, not providing  
2 guaranteed value returned in comparison to a Chapter 7  
3 liquidation.

4 From my understanding, all distribution methods  
5 from effective date to deactivation day are to follow best  
6 interests. On the plan under CEL token settlement in the  
7 plan, Docket 3332 on Page 116, it indicates that all CEL  
8 token deposit claims other than custody claims that are CEL  
9 token deposit claims shall be valued at 25 cents.

10 However, on the debtor's balloting, the custody  
11 class was assigned 25 cent valuation for cell tokens in the  
12 custody class. And I do want to note that the custody class  
13 in the CEL monetary majority voted to reject the CEL  
14 settlement plan.

15 In my particular situation, I had pure custody  
16 assets that were not able to be withdrawn pursuant to the  
17 withdrawal order as a result of having a (indiscernible).  
18 This resulted in my pure custody assets moved into 6A from  
19 the 6B class as I -- and I was able to reject the proposed  
20 CEL custody settlement in the custody class by a monetary  
21 majority after initially accepting the custody settlement as  
22 a result.

23 This was never explained in explicit listing or  
24 ballot instructions or otherwise. From my understanding  
25 maybe a double-digit number of people in the world that

1 could do this. But I fell under that category. So the  
2 settlement, the custody settlement calls for the debtor if  
3 they cannot satisfy in-kind distributions during the trustee  
4 phase and the debtor has confirmed they are not able to  
5 distribute any other cryptocurrency aside from bitcoin or  
6 Ethereum in Hawaii in that phase, that the conversion rate  
7 shall be determined using the value of the original digital  
8 asset of petition date in U.S. dollars and will be converted  
9 into an (indiscernible) cryptocurrency based on the value of  
10 such digital asset on the date of entry of the settlement  
11 approval order.

12 In the CEL token hearing of September 28th which  
13 was a day after the final amendment of the plan, the  
14 debtor's counsel indicated that this was an excellent  
15 question and they had not thought of that scenario.

16 In addition, I do believe the deactivation day  
17 language indicates that a creditor may receive less than  
18 their Chapter 7 liquidation value. It is reasonable to  
19 assume that many people have moved on from Celsius and will  
20 simply receive a check in the mail from the trustee with the  
21 activation day value.

22 While most cryptocurrencies have indeed risen in  
23 value, there are some that have fallen in value on petition  
24 date. And I believe the Debtor must follow the best  
25 interest in that case, providing equal or greater value to

1 the cryptocurrency as of that petition date.

2 The Debtor has indicated they want to use market  
3 rates, which do not always reflect liquidation values of the  
4 assets that have fallen in value since petition date. My  
5 interpretation of the change after balloting on the 27th  
6 stem from the fact that the debtor wishes to assign a value  
7 of 25 cents to the CEL token in custody class, which in my  
8 opinion is not fair and equitable in terms of liquidation  
9 rates in comparison to other classes.

10 Custody is targeted with the most monetary loss as  
11 a result. I do believe that this violates Bankruptcy Code  
12 1127 and Bankruptcy Rule 3019. My stance is that CEL should  
13 be assigned a liquidation value across its respective  
14 classes. For the CEL token in pure custody, that's 100  
15 percent liquidation value of petition day prices. The value  
16 returned in that case must be equal to 81 cents.

17 For CEL general custody at a 72.5 liquidation  
18 rate, the value returned must be equal or to at least 59  
19 cents. For CEL in general Earn, which has a 47.4 percent  
20 liquidation rate of a Chapter 7, the value returned must be  
21 equal or greater than 38 cents.

22 And my concerns is this does not meet the best  
23 interest of a creditor like myself. My claim, my dollarized  
24 claim on CEL token is \$600,000. And I believe the Debtor  
25 tries to mitigate that petition date value down to under

1     \$200,000. And this monetary loss is not fair and equitable  
2     to me in comparison to other classes. And therefore I  
3     reject the plan.

4             You know, I do want to mention since becoming a  
5     vocal dissenting member, I've been the subject of  
6     harassment, intimidation, and threats. And I don't think  
7     that's appropriate at all. You know, my objective is to get  
8     through this Chapter 11 in a fast process so we can all  
9     maximize our value. But these specific concerns, I have  
10    been getting vague responses on. Nobody has given me my  
11    direct options on this. This wasn't even explained on the  
12    balloting, Your Honor. And the debtor's counsel even said  
13    that was a great question and they didn't even think of  
14    that. So, you know, I would like a clarification on that.

15            I would also like to update the Court in regards  
16    to a criminal matter from the FTX and Alameda case. And I  
17    submitted this on the docket today, Your Honor. I did  
18    submit a formal transcript. The CEO of Alameda Research,  
19    Caroline Ellison, who has agreed on a plea deal with  
20    prosecutors to testify against FTX, last Wednesday, Ms.  
21    Ellison testified that her and Mr. Bankman-Fried the CEO of  
22    FTX, were considering selling billions of dollars-worth of  
23    bitcoin if it was ever above \$20,000. I believe this  
24    presents potential challenges to any valuation arguments and  
25    presents challenges to valuation concerns on all assets

1 (indiscernible), especially if a competitor was conspiring  
2 to suppress the price of bitcoin.

3 So, Your Honor, those are my concerns today. And  
4 I appreciate the Court's time in hearing my objections and  
5 concerns.

6 THE COURT: All right. I think, Mr. Kirsanov, you  
7 previously raised issues about those with custody. And I  
8 believe that the Debtor's counsel words to effect that it  
9 was a good question and that it clearly -- it doesn't go to  
10 the evidence that's been admitted, but it is clearly going  
11 to go to final arguments that have to be made. So I'm not  
12 going to ask Debtor's counsel to respond today. But it's  
13 something -- and Mr. Kirsanov, when we get to the closing  
14 argument, you'll have a chance to raise it again. I think  
15 because this is the second time, you laid it out in more  
16 detail today. And I'm sure the Debtor's counsel is going to  
17 want to respond.

18 I think the one point, if I'm understanding what  
19 you said that I'm going to push back on -- and I'm not  
20 deciding the evidence at this point. There's no witness who  
21 has testified that CEL should be valued at 81 cents at the  
22 petition date. There's been a variety of testimony from --  
23 at the petition date, it was really worthless because it was  
24 a utility token and had no utility. Or if it did, it was  
25 purely speculative whether there was going to be a



1 reorganization possible where the CEL token would have any  
2 utility going forward. So zero at the low end. No one,  
3 including in the cross-examination today, there is no one  
4 who said it's 81 cents. So we'll have to see. This will be  
5 for legal argument.

6 MR. KIRSANOV: If I may respond to that, Your  
7 Honor?

8 THE COURT: Briefly.

9 MR. KIRSANOV: With regard to the most recent  
10 testimony by Ms. Ellison from Alameda Research, I do believe  
11 it is perhaps even a conflict of interest in the expert  
12 witness who will have admitted to receiving seed funding  
13 from Alameda research. And now if Alameda research and FTX  
14 were indeed conspiring to keep the price of bitcoin  
15 suppressed under \$20,000, this prevents -- excuse me, this  
16 presents substantial issues on general valuation not only on  
17 the CEL token, but across all other petition date values.

18 THE COURT: All right. So I'm going to stop that  
19 testimony. I'm going to stop those arguments for now.

20 We have one other witness that we moved to the  
21 end, and that's Mr. Schneider. Do you wish to be heard  
22 today? It was David Schneider. He originally was number 12  
23 on the list. And at his request, I moved him to the last  
24 for today.

25 MR. SCHNEIDER: Yes.

1 THE COURT: Go ahead, Mr. Schneider.

2 MR. SCHNEIDER: Okay. Can you hear me fine, Your  
3 Honor?

4 THE COURT: Yes, I can. Go ahead.

5 MR. SCHNEIDER: Okay. Yeah, I would prefer to be  
6 heard tomorrow. I've been up all night for the past 24  
7 hours working on this. I am definitely inexperienced at  
8 what -- where I'm at here today. And I need a little bit  
9 more time to be able to be prepared.

10 THE COURT: What is it that you're preparing, Mr.  
11 Schneider?

12 MR. SCHNEIDER: To be honest, I'm not exactly sure  
13 exactly the intent and purpose of this hearing here today.  
14 I know I submitted my exhibits and I'm basically preparing a  
15 statement of verbalizing how the exhibits fit in with my  
16 objections. And I'm not there yet, Your Honor.

17 THE COURT: Okay. Why don't you hold off for a  
18 second. So let me ask the debtors then. So the objectors  
19 are seeking to call an additional expert witness.

20 MR. MCCARRICK: Yes, Your Honor. We're happy to -  
21 -

22 THE COURT: Make your appearance.

23 MR. MCCARRICK: Sorry. Every time.

24 THE COURT: Every time.

25 MR. MCCARRICK: T.J. McCarrick, Kirkland & Ellis,

1 on behalf of the Debtors. We're happy to push forward  
2 tonight to the extent the witness is available. If you'd  
3 like to proceed tomorrow with remote testimony, we're happy  
4 to do that.

5 THE COURT: I think I would like to proceed  
6 tomorrow with remote testimony.

7 MR. MCCARRICK: And in fairness, I would like  
8 that, too. There have been some new underlying materials I  
9 understand have been posted on Twitter from the expert. So  
10 I'll spend the evening with those and we can --

11 THE COURT: All right. So let me understand. I  
12 am prepared to allow Mr. Schneider to go in the morning as  
13 well to give him some more time. I hope you're not going to  
14 spend another sleepless night, Mr. Schneider, but I will  
15 wait to give you a chance to speak tomorrow morning, okay?

16 MR. SCHNEIDER: Okay. Thank you, Your Honor. I  
17 appreciate it very much.

18 THE COURT: Let's deal with -- I guess I have a  
19 couple of questions. So who is the expert and who is  
20 calling him?

21 MR. MCCARRICK: Mr. Faraj. There's been a number  
22 of letters on the docket, but Mr. Davis identified Mr. Faraj  
23 on his witness list. So I think technically Mr. Davis would  
24 be the sponsoring --

25 THE COURT: Okay. Have you deposed Mr. Faraj?

1 MR. MCCARRICK: We have.

2 THE COURT: Okay. So the only witnesses as of now  
3 for the objectors to listen to would be Mr. Faraj and Mr.  
4 Schneider.

5 MR. MCCARRICK: Correct. And my understanding  
6 just as to Mr. Schneider is that he did not submit any  
7 written testimony.

8 THE COURT: Correct.

9 MR. MCCARRICK: He had certain exhibits listed,  
10 which we can discuss. But yes.

11 THE COURT: Correct.

12 UNIDENTIFIED SPEAKER: Your Honor, Ms. Lau raised  
13 her hand.

14 THE COURT: Yeah. We're going to finish with Ms.  
15 Lau this afternoon before we finish.

16 Does the Debtors or the Committee plan to call any  
17 rebuttal witnesses?

18 MR. MCCARRICK: Speaking for the Debtors, not at  
19 this time, Your Honor.

20 THE COURT: I don't know what time you're thinking  
21 about.

22 MR. MCCARRICK: No, I understand. I would be  
23 surprised if we had to haul someone in here tomorrow.

24 THE COURT: Okay. Let me hear from the Committee.

25 UNIDENTIFIED SPEAKER: We're in the same

1 situation, Your Honor.

2 THE COURT: Okay. So, Ms. Lau, I'm going to go  
3 ahead and listen to you. I called you earlier. I don't  
4 know whether you had dropped off and signed back on, but you  
5 were on the list. So go ahead, Ms. Lau. Go ahead, Ms. Lau.

6 MS. LAU: Can you hear me?

7 THE COURT: Yes, I can hear you.

8 MS. LAU: Okay. Sorry. I had to hook up an  
9 external microphone. This is like -- I didn't know if it  
10 works.

11 THE COURT: Okay.

12 MS. LAU: I wasn't aware that I was supposed to be  
13 here, but I can, like, voice my objections, the ones that I  
14 wrote down before. Because I do have everything.

15 THE COURT: Well, let me ask you this. If there's  
16 anything you want to add to your written objections, now  
17 would be the time to do it.

18 So the Court entered an order on October 13th and  
19 it provided the list and the order that I was going to hear  
20 the objectors. And you were listed as number 22 on the  
21 list. So it's okay. It's okay. I'm listening to you now.

22 In your written objection, you don't have to just  
23 repeat what's there, but I'm going to give you a chance to  
24 speak if you wish to.

25 MS. LAU: Can I say what was in there and then

1 also maybe add? Or do you just want me to say if I have  
2 anything new.

3 THE COURT: We have the written objection. I'm  
4 not -- I want to give you a chance to say what you want to  
5 say. Okay? So go ahead.

6 MS. LAU: I guess my feelings towards, like, what  
7 I felt was based on the disclosure statement. Because I  
8 really felt like it made all these -- it took all these  
9 liberties that I don't feel were really there. Like, I  
10 thought that, like, for example, I'm in my very first  
11 objection, like you already ruled, but we were supposed to  
12 get our Flare tokens back. And then they said they're not  
13 going to give us the Flare tokens back because, like,  
14 Celsius didn't have a custody account at the time. And,  
15 like, I've never had a custody account because I'm Canadian.  
16 Canadians don't even have custody accounts. And we've been  
17 waiting since 2020 to get those. So I was like, how could  
18 you just say we're not going to give you back just because  
19 there were no custody accounts?

20 And, like, a lot of the rulings I felt like didn't  
21 take into account a lot of -- like even how they said that  
22 everybody -- that because so many people voted in favor of  
23 the Celsius plan that Celsius creditor -- like all the  
24 people who have Celsius actually agreed to the valuation of  
25 Celsius. I really wanted to stress that I don't think that

1 that's true. I already know another creditor who only voted  
2 that way because she wanted to get some money back from the  
3 claim. And even though she has CEL token, she's like, well,  
4 what can I do. If I don't vote yes, I don't any money. And  
5 that doesn't reflect the fact that we're like, yes, we're  
6 fine with you valuing 25 cents.

7 Like I said in my letter, I took out a line of  
8 credit just to buy some CEL token. And some of it was even  
9 for, like, four dollars. And I think that it's crazy that  
10 regardless -- I realize that everyone's trying to value CEL  
11 and see what price it was at the time, but I think it's  
12 ridiculous if we get nothing back.

13 Like, I feel -- from what I understand, Alex  
14 Mashinsky and all the other people aren't even getting any  
15 value for their CEL. But I don't -- if they're not going to  
16 get anything for their CEL, why is it that everyone who  
17 bought CEL has to suffer? Because so many people are mad at  
18 Alex and all the people for, like, manipulating the price of  
19 Celsius. We bought CEL token at certain prices. And now  
20 because so many people are, like, Celsius is stupid, Celsius  
21 did this and that and that, then we can't get anything what  
22 we purchased because of all these negative feelings towards  
23 Celsius people. I feel like it should at least be taken  
24 into account that there was a lot of us that bought Celsius,  
25 and we bought it for certain prices, like a lot higher than

1 this 25 cents or 20 cents and all those prices that they got  
2 to buy it for. And now we have to worry about not even  
3 getting anything for it or getting like 20 cents or 25  
4 cents. Like I said, I took out one line of credit just to  
5 buy it for 40 cents and another just to buy it for like four  
6 dollars. So I already had \$10,000 invested in Celsius. And  
7 I feel like everybody just being like we shouldn't get  
8 anything because Celsius is, like, this, that and another.  
9 Like that we all bought it thinking that it had value, and  
10 it should. And it's not like it didn't have any value.  
11 Like somebody mentioned, there's still a market cap for it.  
12 So I don't understand why there's this big argument that we  
13 should just get nothing for it.

14 And I know it's probably too late to talk about  
15 this, but I thought it was really unfair how they forced us  
16 to, like, just accept our coins in terms of bitcoin and in  
17 Ethereum. It's like I have 36 coins and then my taxes are  
18 going to be ridiculous now because they're selling all my  
19 coins without me getting a say in it. And just so that the  
20 people who kept lots of bitcoin because from my  
21 understanding, a lot of the creditors that have big holdings  
22 have, like, mostly just bitcoin and Ethereum. So it all  
23 helps them. And then they get what they want. But all  
24 these little guys like me who only buys -- who have, like,  
25 smaller holdings. But we have many coins. Now we lose all



1 the work we put into, like, getting each one of those --  
2 every one of those coins. Like, we have to research a lot  
3 to find out which coins we want to buy. We have to, like,  
4 try to buy them at good prices all the time. It's really  
5 difficult. There was so much work into going into that.  
6 And I thought that it was really unfair that people just --  
7 just because the biggest creditors have bitcoin and  
8 Ethereum, we all just lose all the work we put in just  
9 because that satisfies them.

10 I put in my -- I submitted evidence. I didn't  
11 know after the fact with the letter. And I showed that one  
12 of the articles was showing that (indiscernible) of Celsius  
13 -- of the (indiscernible) in Celsius (indiscernible). I  
14 think it said like sixth-something percent (indiscernible)  
15 coin. And they lost the coin that they had, but it's not  
16 like they lost the coins that we bought. But because so  
17 many people are invested in bitcoin, now it feels like we  
18 just get -- we have to go along with whatever everybody else  
19 does. I just didn't think that was fair.

20 And I wrote for number four inappropriate  
21 allocation of \$2.6 million of accountholder funds to the  
22 emergence incentive plan awards. I know that's been  
23 addressed a number of times. And I know that people have  
24 come on here saying that, oh, this is normal that -- but I  
25 already feel like they're already getting paid so much money

1 from creditor money. And then it already said somewhere  
2 later, like in the plan way later that NewCo, they were  
3 going to get -- they were going to have penalties instead of  
4 incentives for, like, if they don't meet quota. And I don't  
5 understand why. Like, I think that would motivate someone  
6 just as much to have a penalty if they didn't meet what they  
7 were supposed to do than, like, an incentive.

8 And I said there was too much freedom for plan  
9 creators to use the plan after the fact with no limitations  
10 and no requirements to stick to what was already put forth  
11 (indiscernible). I just thought it was crazy that they  
12 have, like, potential exists for inaccuracies and the  
13 Debtors have no duty to update. They're basically saying  
14 that we could put something completely wrong here and we  
15 don't have to tell you and we can change it. And as long as  
16 you, the judge, doesn't tell them you have to inform  
17 everybody that you've made an update or changed something,  
18 they can get away with changing the plan as much as they  
19 want. And the fact that they added two NewCo members  
20 without telling anybody even though that's going to require  
21 so much Celsius creditor money, I felt like that was really  
22 unfair. That's a huge deal. Like, how much is it going to  
23 cost to pay for two more people? Plus, they're people from  
24 the NewCo board. They're not even Celsius creditors. So it  
25 just felt to me like how do you know that they're not just

1 voting for each other and promising each other I'll vote for  
2 you here if you vote for me here so then we can all get  
3 seats. And then we don't even get a say because we're  
4 creditors. From my understanding, people from the committee  
5 of creditors, they have seats on the litigation committee,  
6 (indiscernible) board and all these different committees.  
7 And some of them you get to vote on. And how do we know  
8 that they're not voting for each other so that they can stay  
9 on and make even more money after this while we still get  
10 less money and less money and less money because they keep  
11 creating these positions that we are funding from our money.

12 And then I said it was unfair protection of plan  
13 creators from litigation because I was saying that if these  
14 people are really taking advantage of the fact that there's  
15 all these holes where they can add what they want and then  
16 change so many things whenever they want, now we're not even  
17 allowed to complain about it because we're not allowed to  
18 litigate against them because we were forced to sign and we  
19 were forced to opt out of the third-party release if we  
20 wanted (indiscernible) of this plan. I thought that it was  
21 really unfair that if you want to accept the plan, even if  
22 you say I opt out of the third-party release, you still get  
23 opted in regardless so then you can't do anything about it.

24 And then later I said overly narrow scope of plans  
25 for litigation, administrators appearing confined to

1 pursuing litigation against former debtors with no  
2 indication of a plan to go after potentially bigger fish.  
3 I'm not sure if they already were planning to go after FTX,  
4 because I know there was a claim that was, like, Celsius  
5 filed a \$2 billion claim against FTX. But when I read the  
6 (indiscernible) last year (indiscernible) everybody hates  
7 now because they, like, ran off with creditor money, but  
8 they're not going after this big fish that has, like, a \$2  
9 billion claim. Where if they go after them, then we could  
10 all get back \$2 billion. And then that's going to be so  
11 much more money for creditors.

12 I know that it said that they're not necessarily -  
13 - they don't have to name everybody they're going after, but  
14 I thought it was very concerning that they don't list  
15 something huge like that. Because we could get so much more  
16 money if they actually pursued that and if they actually  
17 made that a focus rather than just focusing every -- all  
18 their energy Alex, Alex, Alex. Like --

19 THE COURT: Ms. Lau, I'm going to -- because I  
20 think I have your arguments down. And there will be closing  
21 argument in the case. Let me raise -- thank you very much,  
22 Ms. Lau, for your participation.

23 Let me ask a couple of things with respect to Mr.  
24 Blonstein's deposition, has that been set at this point?

25 MS. BRIER: Your Honor, Grace Brier, Kirkland &

1 Ellis on behalf of Debtors. I don't know that we have an  
2 official time set, but we will get confirmation as soon as  
3 we have it.

4 THE COURT: Okay. Here's what I would like to do.  
5 We've got Mr. Faraj should be available to -- where is he?  
6 I don't know where --

7 MS. BRIER: Australia.

8 THE COURT: Sydney, Australia. Nine a.m. tomorrow  
9 morning he has to be available for examination in court. My  
10 plan is -- and Mr. Schneider will have his opportunity. I'm  
11 going to give Mr. Schneider -- Mr. Schneider, I'm going to  
12 give you a chance to speak first right at 9:00 tomorrow  
13 morning. All right? And then we'll deal with Mr. Faraj.

14 I plan to recess this hearing tomorrow no later  
15 than 12:30. We can talk about a schedule for closing  
16 statements in any post-trial briefs. The opening briefs  
17 were quite comprehensive. I think they may need -- they may  
18 have some additional arguments in light of how the evidence  
19 has come in.

20 I don't know what your schedule is for when you  
21 expect to have transcripts, when they'll be posted. Others  
22 would have an opportunity as well to file briefs. So we  
23 ought to do that tomorrow.

24 Is there any reason that anybody expects the  
25 testimony to go beyond tomorrow morning?

1 MS. BRIER: None from Debtors, Your Honor, other  
2 than Mr. Blonstein's deposition.

3 THE COURT: Right. So, look, I would hope that  
4 that could be done -- if necessary, we could resume the  
5 hearing on Wednesday morning just with respect to Mr.  
6 Blonstein.

7 MS. BRIER: Understood, Your Honor. We'll have an  
8 update for the Court right when we start tomorrow as to when  
9 that's scheduled. And we'll endeavor to get that done  
10 tomorrow.

11 THE COURT: All right. So one of my law clerks  
12 just handed me a note. Mr. Kirsanov, you wanted to say  
13 something?

14 MR. KIRSANOV: Yes, sir. May I ask a procedural  
15 question?

16 THE COURT: Go ahead.

17 MR. KIRSANOV: Does the Court have jurisdiction  
18 over the claim of breach of contract before a petition date  
19 and before the freeze?

20 THE COURT: Prepetition claims are definitely part  
21 of this Court's jurisdiction to deal with. That would have  
22 to be included in -- and that had to be -- any breach of  
23 contract claim had to be asserted and a proof of claim filed  
24 with the Court by the bar date. There certainly have been  
25 breach of contract claims that have been asserted, but the

1 bar date has come and gone a long time ago.

2 MR. KIRSANOV: Yes, sir. And in regards to a  
3 breach of settlement, is that something that the Court has  
4 jurisdiction over the custody settlement?

5 THE COURT: I'm sorry, I didn't understand the  
6 beginning of your question, Mr. Kirsanov.

7 MR. KIRSANOV: With regards to breach of  
8 settlement and the custody settlement, the first payout,  
9 does the Court also have jurisdiction over that?

10 MR. KOENIG: Your Honor, Chris Koenig for the  
11 Debtors. I think what Mr. Kirsanov is asking is do you have  
12 jurisdiction -- he signed the custody settlement. I think  
13 he is alleging that we violated the custody settlement. I  
14 think he's asking --

15 THE COURT: I certainly have jurisdiction over  
16 that issue.

17 MR. KOENIG: Yes.

18 THE COURT: Okay. And the other thing is, Mr.  
19 Davis, I've been advised that you also wanted to say  
20 something before we end for the day.

21 MR. DAVIS: Yes I do, Judge. Your Honor, I would  
22 just once again ask the UCC and the Debtors to turn over all  
23 the FTX data they received through the subpoena that you  
24 issued.

25 THE COURT: Overruled. I mean sustained --

1 objection. There's an objection. It's sustained.

2 MR. MCCARRICK: Objection, Your Honor. T.J.  
3 McCarrick, Kirkland & Ellis, on behalf of the Debtors.

4 THE COURT: Yes.

5 MR. MCCARRICK: I would just note that the  
6 discovery deadline for opposition of confirmation --

7 THE COURT: Has come and gone. Come and gone.  
8 All right.

9 So that finishes our hearing for today. I'll see  
10 you all at 9:00 tomorrow morning. You can leave anything in  
11 the courtroom. The courtroom is going to be locked up.  
12 Okay? Thanks very much. See you all tomorrow.

13 MR. DAVIS: Judge, tomorrow --

14 THE COURT: No, Mr. Davis. Enough. Enough. See  
15 you all -- if you log in tomorrow, we'll have a hearing  
16 tomorrow morning. Court is adjourned. Thank you.

17 (Whereupon these proceedings were concluded at  
18 5:39 PM)

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing  
transcript is a true and accurate record of the proceedings.

A handwritten signature in cursive script that reads "Sonya M. Ledanski Hyde". The signature is written in dark ink on a light background.

Sonya Ledanski Hyde

Veritext Legal Solutions

330 Old Country Road

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Date:

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[yeah - zoom]

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**Exhibit F**

**October 17, 2023 Transcript (Case in Chief in Opposition to Plan)**

*Includes (i) arguments of David Schneider and (ii) the testimony of Hussein Faraj (Nugensis).*

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 22-10964-mg

4 - - - - - x

5 In the Matter of:

6

7 CELSIUS NETWORK LLC,

8

9 Debtor.

10 - - - - - x

11

12 United States Bankruptcy Court

13 One Bowling Green

14 New York, NY 10004

15

16 October 17, 2023

17 9:03 AM

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20

21 B E F O R E :

22 HON MARTIN GLENN

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: KAREN

1 HEARING re HYBRID CONFIRMATION HEARING

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15 GEORGIA MEADOW  
16 MOHSIN (MO) MEGHJI  
17 BRIAN MENDIETA  
18 LAYLA MILLIGA  
19 KEITH NOYES  
20 CAITLIN O'CONNELL  
21 DONALD L. POYNTER  
22 CHRISTOPHER PAGNANELLI  
23 JEFF PATTON  
24 BRETT A. PERRY  
25 GREGORY F. PESCE

1 KHAI PHAM  
2 MORGAN PHOENIX  
3 KAROLINA PIASEK  
4 HANS POLZMACHER  
5 MACIEJ PRCZEK  
6 CRAIG RASILE  
7 ANNEMARIE V. REILLY  
8 MARK ROBINSON  
9 JONATHAN RODRIGUEZ  
10 MIKE SARKISSIAN  
11 JAVIER SCHIFFRIN  
12 NOAH M. SCHOTTENSTEIN  
13 SAM SCHREIBER  
14 TOBY SEGAR  
15 DAVID SENES  
16 SAMI SAIKH  
17 LAUREN NICOLE SICKLES  
18 MATTHEW W. SILVERMAN  
19 HANNA SIMSON  
20 LUKE SPANGLER  
21 COURTNEY BURKS STEADMAN  
22 CHINGIZ SULEYMANOV  
23 KEYAN TAJI  
24 ELLE TOUSSI  
25 DAVID TURETSKY



1 ELVIN TURNER  
2 VETON VEJSELI  
3 PATRICIA WALSH  
4 CAROLINE WARREN  
5 KATIE WICK  
6 ZACHARY WILDES  
7 ANDREW YOON  
8 BRIAN YOUNG  
9 KAILA ZAHARIS  
10 JARNO BERG  
11 JOEL BLOCK  
12 DAKEN COLEMAN  
13 ROBERT M. KAUFMANN  
14 RAKESH PATEL  
15 MIA COOPER  
16 DREW DUFFY  
17 SCOTT FLAHERTY  
18 UDAY GORREPATI  
19 TAYLOR HARRISON  
20 DIETRICH KNAUTH  
21 ALEX MCCAMMON  
22 TIMOTHY REILLY  
23 RYAN SCHRAMM  
24 PETER J. SPROFERA  
25 ZACHARY ZABIB

I N D E X

1				
2				
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4	HUSSEIN FARAJ			
5	By Mr. McCarrick		36	
6	By Mr. Kirsanov		91	
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25

1 P R O C E E D I N G S

2 CLERK: All rise.

3 THE COURT: You may be seated. Good morning,  
4 everyone. All right. Anything to report over night? Any  
5 new developments?

6 MS. BRIER: Yes, Your Honor.

7 THE COURT: Ms. Brier.

8 MS. BRIER: Good morning. Grace Brier, Kirkland &  
9 Ellis, on behalf of Debtor. A couple of housekeeping items,  
10 Your Honor.

11 THE COURT: Sure.

12 MS. BRIER: We filed an exhibit list last night at  
13 5 p.m. with documents we intend to use on cross examination  
14 today. I have a copy of that for the Court.

15 THE COURT: Could you? Because I didn't --

16 MS. BRIER: -- the U.S. Trustee.

17 THE COURT: -- have a chance to look at it this  
18 morning, so.

19 MR. KIRSANOV: I would note that those exhibits  
20 were filed after 5 p.m. and (indiscernible) exhibits to be  
21 submitted as well.

22 THE COURT: Who is that speaking?

23 MR. KIRSANOV: I'm sorry, Your Honor. That's  
24 Dimitry Kirsanov, pro se creditor.

25 MS. BRIER: Your Honor, my understanding is they

1 were filed at 5:01.

2 THE COURT: I still couldn't hear. Who is that --

3 MR. KIRSANOV: I'm sorry, that's me, Dimitry

4 Kirsanov, pro se.

5 THE COURT: Okay. Objection is overruled. Go

6 ahead, Ms. Brier.

7 MS. BRIER: Next on the list, Your Honor, is the

8 Blonstein deposition. We have that scheduled tentatively

9 for noon today.

10 THE COURT: Okay.

11 MS. BRIER: Mr. Bronge has asked that if Court is

12 still continuing at that time that we start later.

13 THE COURT: We'll recess by then.

14 MS. BRIER: Excellent. That is the current start

15 time. There's a court reporter and everything set up. We

16 would propose that once we have a transcript, Debtors would

17 file that on the docket on Mr. Bronge's behalf and then

18 follow up after we file that with our objections to the

19 admissibility of testimony that is inadmissible based on our

20 objections.

21 THE COURT: All right, just give me a second. So

22 he'll be deposed by -- and you know, you're going to examine

23 him and if there's any redirect, they'll do it as well. And

24 then the testimony is just going to be submitted to the

25 Court? Is that --

1 MS. BRIER: That's our proposal, Your Honor, that  
2 we'd submit the transcript as his testimony on Mr. Bronge's  
3 behalf, and then we'd also submit our own objections to --

4 THE COURT: Sure

5 MS. BRIER: -- that testimony as to what should  
6 and should not be admissible.

7 THE COURT: That's fine. We'll do it that way.  
8 So I'm not going to schedule another -- essentially, I  
9 contemplate that we're going to conclude taking evidence in  
10 the courtroom today, subject to completing the deposition,  
11 the Faraj deposition, and that will be submitted with any  
12 objections.

13 MS. BRIER: Yes, Your Honor. And once it -- one  
14 other proposal is when we do set closing arguments, perhaps  
15 if there are any outstanding evidentiary questions as to  
16 those objections, we could open the record briefly and  
17 resolve those, if any.

18 THE COURT: I'm going to rule -- I'm going to rule  
19 on the objections, okay.

20 MS. BRIER: Excellent. Even better.

21 THE COURT: We're not going to hear any argument  
22 about the objections. I -- as I do in trial, I rule  
23 promptly.

24 MS. BRIER: Perfect. That sounds fantastic.

25 THE COURT: Okay. That's -- that'll be how we do

1 it. When we concluded yesterday, I agreed to have Mr.  
2 Schneider testify first, if he wishes to or appear first.  
3 And Mr. Schneider, do you wish to be heard?

4 MR. SCHNEIDER: Yes, I do, Your Honor.

5 THE COURT: All right, please go ahead.

6 MR. SCHNEIDER: Okay. I guess what I'm going to  
7 start with is just presenting my exhibits one by one for the  
8 Court here. The first exhibit I'd like to submit or present  
9 is the Terms of Service, Version 8 and Schneider's Exhibit  
10 22, 23 --

11 THE COURT: It's already in evidence as Celsius  
12 Exhibit 84.

13 MS. BRIER: So, Your Honor --

14 THE COURT: Wait a second. No, it's not. Hold  
15 on.

16 MS. BRIER: This is a filing that Mr. Schneider  
17 made. It was a day late, so we did not submit objections to  
18 it.

19 THE COURT: Okay.

20 MS. BRIER: That said, we have a filing ready and  
21 we are happy to go through them and say our objections as to  
22 each --

23 THE COURT: Just --

24 MS. BRIER: -- as he walks through them.

25 THE COURT: Just -- you can orally.

1 MS. BRIER: Exactly. We're happy to do that and  
2 I'm prepared to do that.

3 THE COURT: There's a Terms of Service in here?

4 MS. BRIER: So he does have the terms of service  
5 in here. I don't think it's his Exhibit 1. I think it's  
6 later in the filing. Exhibit 1 is --

7 MR. SCHNEIDER: I --

8 MS. BRIER: -- "The Wealth of Nations" by Adam  
9 Smith.

10 THE COURT: Yeah.

11 MR. SCHNEIDER: Yeah.

12 MS. BRIER: And we'd object to that as hearsay.

13 THE COURT: Objection to "The Wealth of Nations"  
14 Exhibit 1 is sustained. Go ahead, Mr. Schneider.

15 MR. SCHNEIDER: Okay, so this is my Exhibit 22 and  
16 Exhibit 23A and 23B. And essentially, this is Version 8 of  
17 the Terms of Service. And I'm just going to read the  
18 highlight that I highlighted on there.

19 THE COURT: Just hold on. I want to make sure I  
20 have them before we go there.

21 MR. SCHNEIDER: Okay.

22 THE COURT: Did you include this in the exhibits  
23 that you submitted, Mr. Schneider?

24 MR. SCHNEIDER: Yes, I did. Yes.

25 MS. BRIER: So Your Honor, I think what he

1 submitted is this document. And so it's excerpts of things  
2 rather than sort of a list of what he proposed to admit. So  
3 for example, we're looking -- I think you just raised 22 --

4 MR. SCHNEIDER: Yes.

5 MS. BRIER: -- 23A and 23B. They're just excerpts  
6 of the Terms of Service with highlights.

7 THE COURT: What --

8 MS. BRIER: Our position is that those are -- the  
9 Terms of Service in entirety are already in evidence and  
10 that's more appropriate than excerpts.

11 THE COURT: They are, but just point to me where  
12 in --

13 MS. BRIER: Sure. I'm Page 22 of the filing. And  
14 I think he's referencing --

15 MR. SCHNEIDER: That document number --

16 THE COURT: Mr. Schneider, stop for a second.

17 MR. SCHNEIDER: (indiscernible).

18 THE COURT: Mr. Schneider, stop.

19 MR. SCHNEIDER: Okay.

20 THE COURT: Go ahead, Ms. Brier.

21 MR. SCHNEIDER: Yes, sir.

22 MS. BRIER: So, as I understand Mr. Schneider's  
23 filing, he excerpted certain documents throughout and I  
24 think that's his exhibit list. So he's talking about  
25 Exhibits 22, 23A and 23B which are on Pages 22 and 23 of



1 Docket 3780.

2 THE COURT: And those are all part of the terms of  
3 service Version 7?

4 MS. BRIER: Yes, Your Honor. They're all Docket  
5 No. 393 which is Celsius Exhibit 38 already in evidence, so  
6 our position is that's in evidence. We have no objection,  
7 of course, to that and this would just be duplicative to  
8 what's already in evidence.

9 THE COURT: All right. So Schneider Exhibits 22,  
10 23A, and 23B are from what's already in evidence as Celsius  
11 Exhibit 38, so it's in evidence. I'll permit you,  
12 certainly, to refer the excerpt, but the entire document is  
13 in evidence. Go ahead, Mr. Schneider.

14 MR. SCHNEIDER: Okay. So the excerpt, I'd like to  
15 verbalize is for Exhibit 22, it states that "You may  
16 terminate any loan to Celsius at any time and request that  
17 Celsius return the borrowed eligible digital assets."

18 THE COURT: Okay, I see it.

19 MR. SCHNEIDER: And then further -- okay, and then  
20 on Exhibit 23A, Section 11 under withdrawals, it says "You  
21 have a call option on all loans made to Celsius to demand  
22 immediate complete or partial repayment of any loan at any  
23 time."

24 THE COURT: Okay, I see it.

25 MR. SCHNEIDER: Okay. And then the third exhibit,

1 23B, it says, "For the avoidance of doubt, repayment shall  
2 be in kind, i.e., in the same type of eligible digital asset  
3 loaned by you."

4 THE COURT: Okay. I see it.

5 MR. SCHNEIDER: So -- okay, so here's my  
6 commentary on this. Cryptocurrency is a property that  
7 creditors deposited with Celsius and receiving back that  
8 property is what creditors expected, agreed to, and it is  
9 what Celsius is contractually obligated to return to  
10 creditors upon demand. Schneider demands that his crypto  
11 property be returned to him.

12 THE COURT: You agree --

13 MR. SCHNEIDER: I would --

14 THE COURT: Mr. Schneider, you agree, you don't  
15 get the same Bitcoin back. You get --

16 MR. SCHNEIDER: Yes.

17 THE COURT: -- an equivalent amount of Bitcoin or  
18 whatever the --

19 MR. SCHNEIDER: Correct.

20 THE COURT: -- currency is. You don't -- it's not  
21 like you're -- if you deposited Bitcoin, it's not earmarked.  
22 It's not kept for safe keeping. You have a contract right  
23 to get back the same amount of Bitcoin or ether or whatever  
24 you deposited. Correct?

25 MR. SCHNEIDER: Correct, yes. I -- that is my

1 understanding. Yes, sir.

2 THE COURT: Okay.

3 MR. SCHNEIDER: And --

4 THE COURT: Go ahead.

5 MR. SCHNEIDER: Schneider demands that its crypto  
6 property be returned to him in like kind, not necessarily in  
7 the actual one. Okay. As this Court has -- as this Court  
8 had contractually determined according to the terms of  
9 service that the crypto that Schneider deposited is property  
10 of the Debtors' estate, even so, should this Court also  
11 contractually determine according to the terms of Service  
12 that the debt value owed to Schneider should, in fact, be  
13 returned to him in the same form if possible, in the same  
14 form that he deposited with the Debtor.

15 THE COURT: If there hadn't been a bankruptcy,  
16 that might have been true.

17 MR. SCHNEIDER: Correct. I understand that, sir.  
18 And -- but partial returns or whatever the Debtor is  
19 obligated to return back to myself, is essentially what's at  
20 issue here. And indeed -- so, if possible. And indeed, it  
21 is possible because Debtor is withholding \$450 million in  
22 cryptocurrency to feed Newco, which effectively reduces the  
23 value of crypto creditors would otherwise receive.

24 And my position is for this Court to act  
25 otherwise, without just cause and due process in the face of

1 Debtors' contractual obligations to creditors would affect  
2 the unlawful and unconstitutional taking of property.

3 THE COURT: Bankruptcy has a way of doing that.  
4 Your rights as a creditor are determined along with the  
5 rights of all other creditors. So you may think you have a  
6 right, absolute right to get back exactly what you put in,  
7 but that's not how the bankruptcy system works.

8 MR. SCHNEIDER: Right. I think -- that's not  
9 exactly what I'm thinking. I understand that (audio glitch)  
10 as the total amount back, I realize I won't receive the  
11 total amount back, and that's not what I'm arguing here.  
12 Basically, I'm arguing the recovery (indiscernible) that I  
13 am due to receive back should be returned to me in crypto  
14 according to the contract that Celsius is obligated to  
15 uphold.

16 THE COURT: All right. Are there any other  
17 exhibits that you wish to offer?

18 MR. SCHNEIDER: Yes, there is, sir.

19 THE COURT: What are they?

20 MR. SCHNEIDER: Okay. My next one is Exhibit 3  
21 and Exhibit 4 concerning the liquidation analysis. They're  
22 two charts, a (indiscernible) and a chart.

23 MS. BRIER: Your Honor, we have no objection to  
24 these. They're straight out of the disclosure statement.

25 THE COURT: All right. Schneider Exhibits 3 and 4

1 in evidence.

2 (Schneider Exhibit 3 and 4 entered into evidence)

3 MS. BRIER: And I guess with the caveat that they  
4 are as they purport to be and are straight out of the  
5 disclosure statement, I think there's some commentary under  
6 it that we object to, but --

7 THE COURT: The commentary -- when you say  
8 commentary under it, I see on Page 6 of 41, that looks like  
9 it's -- you're not objecting to the footnotes. They're  
10 actually part of the chart.

11 MS. BRIER: Exactly; 6 of 41, no objection.  
12 That's in my understanding straight from the disclosure  
13 statement.

14 THE COURT: Your issue is the bottom of --

15 MS. BRIER: Exhibit 3.

16 THE COURT: -- Exhibit 3.

17 MS. BRIER: Has some bullets.

18 THE COURT: Okay. That's argument.

19 MS. BRIER: Exactly. Thank you.

20 THE COURT: Go ahead, Mr. Schneider.

21 MR. SCHNEIDER: Okay. So in the Debtors'  
22 liquidation analysis, as recovery for creditor's claim, the  
23 Debtor has calculated certain recovery percent for  
24 creditors. In Exhibit 4, you can see basically at the  
25 bottom of the waterfall it shows Newco plan at 67 percent

1 recovery percent, orderly winddown is at 61.2, and  
2 liquidation midpoint is 47.4 percent.

3 And I'd just like to point out with a strong  
4 emphasis that the total recovery percent values in Exhibit 3  
5 are, in fact, the same recovery percent values in Exhibit 4.  
6 What the difference is, is that Exhibit 3 has broken down  
7 that recovery, that the -- that the Debtor says, I realize  
8 it's an estimate based on whatever -- depending on the  
9 market. And so basically -- and so while Exhibit 3 shows  
10 the same recovery percent value as Exhibit 4, Exhibit 3  
11 shows Debtor is apportioning some of that recovery value to  
12 creditors in the form of common stock or equity.

13 So, while the total -- totalities of (audio  
14 glitch) presented in Exhibit 3 are the same as in Exhibit 4,  
15 Debtor is attempting without Schneider's consent to offering  
16 value in a form different than what Debtors' obligation  
17 demands. And Debtors' obligation, again, as I'm speaking  
18 of, is the Terms of Service which requires them to return --

19 THE COURT: Mr. Schneider, once there's a  
20 bankruptcy, what you get back is what's in an approved plan,  
21 not what you put in originally. That's just how bankruptcy  
22 works. It depends on the plan --

23 MR. SCHNEIDER: Okay.

24 THE COURT: -- being confirmed, but you just don't  
25 get back what you put in when there's been a bankruptcy and

1 they don't have it to give it back to you. All similarly  
2 situated creditors have to be treated the same.

3 MR. SCHNEIDER: Okay. All right.

4 THE COURT: Go on with your next exhibit.

5 MR. SCHNEIDER: Okay. My next exhibit is Exhibits  
6 1 and 2.

7 MS. BRIER: Exhibits 1 and 2 are "The Wealth of  
8 Nations" by Adam Smith.

9 THE COURT: I already sustained --

10 MS. BRIER: -- by James Madison --

11 THE COURT: Sustained. Objection sustained.

12 MS. BRIER: Thank you.

13 THE COURT: Go on with your exhibits.

14 MR. SCHNEIDER: Okay. First, I'd just like to  
15 read the highlights on both of these new exhibits.

16 THE COURT: I just sustained the objection.  
17 They're not coming into evidence. We're not going to hear  
18 about "The Wealth of Nations."

19 MR. SCHNEIDER: Okay, I'm sorry. I was thinking  
20 sustained meant --

21 THE COURT: I read it when I was in college, but  
22 not since, but --

23 MR. SCHNEIDER: Okay. Well, I'll just read the  
24 comments, my commentary then.

25 THE COURT: Move on --

1 MR. SCHNEIDER: (indiscernible).

2 THE COURT: -- your exhibits, Mr. Schneider.

3 MR. SCHNEIDER: So, all right.

4 THE COURT: What's your Exhibit 5A.

5 MR. SCHNEIDER: My Exhibit 5 A is concerning the  
6 way to distribute -- distribution election and it's -- ,  
7 well, basically --

8 THE COURT: Where does 5A come from, 5A and 5B?

9 MR. SCHNEIDER: Okay, 5A came from (indiscernible)  
10 which somebody post -- did this picture and everything like  
11 that.

12 MS. BRIER: We'd object on foundation grounds --

13 MR. SCHNEIDER: And I just copied and pasted it.

14 THE COURT: Objection sustained. What about 5B?

15 MS. BRIER: We have no objection to 5B.

16 MR. SCHNEIDER: 5B --

17 MS. BRIER: It's already in evidence.

18 THE COURT: All right, 5B is in evidence. 5C.

19 (Schneider Exhibit 5B entered into evidence)

20 MR. SCHNEIDER: Okay, 5C is a workup of the  
21 numbers from 5B.

22 THE COURT: Ms. Brier?

23 MS. BRIER: So it's hard for me to know what this  
24 is. I object to foundation. If it's something we have in  
25 evidence, maybe we wouldn't object, but I don't know what it



1 is.

2 THE COURT: What is it, Mr. Schneider? Did you  
3 create it?

4 MR. SCHNEIDER: 5C --

5 THE COURT: Yes, 5C.

6 MR. SCHNEIDER: 5C, the total of the dollar amount  
7 that people toggled to either equity or crypto. And  
8 basically it's totaled out here and then it comes to  
9 basically a 6.1 ratio of dollars that accepted -- elected to  
10 toggle to crypto as opposed to toggling to equity.

11 THE COURT: Did you create this chart or did it  
12 come from somewhere in the evidence already?

13 MR. SCHNEIDER: I created it.

14 THE COURT: Objection sustained.

15 MS. BRIER: Thank you, Your Honor.

16 THE COURT: Exhibit 6.

17 MS. BRIER: Exhibit 6 is -- it appears to be a  
18 section from Mr. Compagna's declaration which is already in  
19 evidence. So to the extent it's already in evidence, we  
20 have no objection.

21 THE COURT: Does that come from Mr. Compagna's  
22 declaration, Mr. Schneider?

23 MR. SCHNEIDER: Document 3332, I believe, Exhibit  
24 7 is Compagna's.

25 THE COURT: All right, it's in evidence.

1 (Schneider Exhibit 6 entered into evidence)

2 MR. SCHNEIDER: I'm not sure.

3 THE COURT: Okay, it's in evidence. What about  
4 your Exhibit 7?

5 MR. SCHNEIDER: Excuse me? I'm sorry?

6 THE COURT: What is your Exhibit 7?

7 MR. SCHNEIDER: Exhibit 7. I believe that's what  
8 we were talking about, wasn't it?

9 THE COURT: I was still back on six. What is  
10 Exhibit 7?

11 MR. SCHNEIDER: Okay. Exhibit 7 is Document No.  
12 3332, which actually that is disclosure statement.

13 THE COURT: All right. And I take it that your  
14 Exhibit 8 is also from the disclosure statement?

15 MR. SCHNEIDER: Yes, sir.

16 THE COURT: Okay, they're in evidence.

17 (Schneider Exhibits 7 and 8 entered into evidence)

18 MR. SCHNEIDER: And Exhibit 9 is also from the  
19 disclosure statement --

20 THE COURT: Nine --

21 MR. SCHNEIDER: -- and Exhibit 10.

22 THE COURT: Any disagreement, Ms. Brier?

23 MS. BRIER: No. I think we've already judicially  
24 --

25 THE COURT: Seven, eight, nine, and ten are in

1 evidence. Okay. What about Exhibit 11?

2 (Schneider Exhibits 9 and 10 entered into  
3 evidence)

4 MR. SCHNEIDER: Okay, I --

5 MS. BRIER: Your Honor, we'd object to Exhibits  
6 11, 12, and 13 ad hearsay. They appear to be websites, but  
7 it's hard for me to tell where they're coming from. So I'd  
8 also object on foundation.

9 THE COURT: Well, let me ask, Mr. Schneider, where  
10 do 11, 12, and 13 come from?

11 MR. SCHNEIDER: Okay, let me find where that's at  
12 here. Kind of out of order in what I had anticipated. So  
13 as far as exhibit -- like, I can't put any commentary on it  
14 then. Is that correct, Your Honor?

15 THE COURT: I'm asking where 11, 12, and 13 come  
16 from.

17 MR. SCHNEIDER: Okay, 11, 12, and 13. Eleven come  
18 -- okay, 11 comes from UK. I don't have the link on there.  
19 It comes from the UK authority government, UK.gov, which  
20 shows Celsius Network Limited information that they're  
21 required to file.

22 MS. BRIER: Your Honor, I don't know the  
23 foundation for this. I -- to the extent that --

24 THE COURT: There's no foundation.

25 MS. BRIER: -- already in evidence --

1 THE COURT: Eleven, twelve, thirteen, objection  
2 sustained. If they're in evidence already -- there's no  
3 foundation for it. What about 14?

4 MR. SCHNEIDER: Twelve, thirteen --

5 THE COURT: What about 14, 15, 16, 17, 18?

6 MS. BRIER: Our position on all of those up to 19,  
7 which is already in evidence, is that they are more  
8 appropriately judicially noticed. They're orders from this  
9 Court or filings from parties.

10 THE COURT: Well, the whole filing, if you want  
11 the Court to take traditional notice of it, I need to know  
12 what documents those are. I'm not going to just let this  
13 in, these excerpts.

14 MR. SCHNEIDER: Okay, so Exhibit 14 is the order  
15 approving solicitation and voting procedure statement. It's  
16 your order approving solicitation and voting procedures,  
17 approving the form the notices. It's Document No. 3337.

18 THE COURT: Give me the number again, 33 what?

19 MR. SCHNEIDER: 3337.

20 THE COURT: All right. The Court will take  
21 judicial notice of it.

22 MS. BRIER: I would also point out that it appears  
23 the way Mr. Schneider put this together is he included in  
24 brackets underneath some of the excerpted titles of the  
25 docket number he's --

1 THE COURT: Okay. All right.

2 MS. BRIER: -- referring to.

3 THE COURT: So, with respect to 14, 15, 16, 17,  
4 18, 19, 20, 21, those are from Court pleadings and the Court  
5 will take judicial notice of each of them. All right, 22.

6 MS. BRIER: Your Honor, I believe we addressed 22,  
7 23A, and 23B --

8 THE COURT: We did. We did.

9 MS. BRIER: -- at the outset with Mr. Schneider.

10 THE COURT: We already did that. Okay. What's  
11 24?

12 MS. BRIER: Twenty-four, I think, is similarly  
13 situated to the ones we just talked about. It looks like a  
14 docket filed, Docket 2054.

15 MR. SCHNEIDER: Yes.

16 THE COURT: All right. The Court will take  
17 judicial notice of them. What about 25A? That's different.

18 MS. BRIER: 25A, would object on hearsay and  
19 foundation grounds.

20 THE COURT: Sustained. 25B. Did we take -- did I  
21 take judicial notice of this yesterday?

22 MS. BRIER: So Your Honor, some of these I think  
23 are either in evidence or have been discussed. It's hard  
24 for me to tell based on some of the excerpts which are and  
25 are not in evidence, but to the extent the Court wants to

1 take judicial notice or these facts about some of these  
2 items are certainly already in evidence. So there's no  
3 objection to the fact that, for example, Mr. Mashinsky was  
4 subject of a complaint or --

5 THE COURT: I'll take judicial notice of the  
6 sealed indictment of Alex Mashinsky and Roni Cohen-Pavon.

7 MS. BRIER: But a lot of that I think has already  
8 been --

9 THE COURT: Right.

10 MS. BRIER: -- introduced in other forms. 26A  
11 looks like an article, so we'd object to foundation and  
12 hearsay on that.

13 THE COURT: Objection sustained.

14 MS. BRIER: And same with 27A --

15 THE COURT: What about 26B?

16 MS. BRIER: Oh, sorry. 26B. Similarly, I think  
17 this fact is already in evidence. I don't know if this  
18 exact document is, but no objection to the fact that Mr.  
19 Pavon pleaded guilty. I think, some of those documents are  
20 in evidence. I just don't know if this one is.

21 THE COURT: Okay. It's going to be admitted.  
22 27A.

23 (Schneider Exhibit 26B entered into evidence)

24 MS. BRIER: Object to foundation and hearsay here.

25 THE COURT: Sustained.

1 MS. BRIER: Same with --

2 THE COURT: 27B?

3 MS. BRIER: -- 27B. 27C is a tweet from Simon  
4 Dixon. Object to hearsay on that.

5 THE COURT: Objections to 27A, B, and C are all  
6 sustained.

7 MS. BRIER: We're almost done. 28A, B, C are all  
8 excerpts from the disclosure statement, so no objection to  
9 those.

10 THE COURT: Okay, 28A, B, and C. All right,  
11 they're admitted in evidence. 29A, B.

12 (Schneider Exhibits 28A, B, and C entered into  
13 evidence)

14 MS. BRIER: 29A and 29B are -- appear to be a  
15 Celsius Network tweet and then a number of replies and we  
16 don't object to the admission of the Celsius Network tweet  
17 as it's an admission as it relates to Mr. Schneider, but we  
18 do object to the replies which are all hearsay.

19 THE COURT: Which are the replies?

20 MS. BRIER: So I think everything after the first  
21 tweet is a reply from someone other than Celsius. So  
22 there's a reply from @Celsius Newco, (indiscernible).  
23 There's a number of responses to the Celsius tweet from  
24 others on the internet, and we'd object to those as hearsay.

25 THE COURT: Right. Sustained. Objection

1 sustained. None of those are coming in.

2 MS. BRIER: I think that's it. I believe that  
3 gets us through all of them.

4 THE COURT: I think that's all of them. All  
5 right. So we've taken care of your exhibit. Is anything  
6 you want to add, Mr. Schneider?

7 MR. SCHNEIDER: Well, there's one other thing I'd  
8 like to ask of you is to take judicial notice of my  
9 objection to plan confirmation, docket number --

10 THE COURT: It's --

11 MR. SCHNEIDER: -- 35 --

12 THE COURT: I have -- you know, Mr. Schneider, you  
13 don't even have to raise that. I'm considering all of all  
14 of the objections to confirmation, including that.

15 MR. SCHNEIDER: Okay.

16 THE COURT: -- just to be clear.

17 MR. SCHNEIDER: All right. Thank you.

18 MS. BRIER: And just for purposes of the record,  
19 our understanding is that he did not submit a declaration or  
20 testimony here today, just his argument and --

21 THE COURT: Correct, and the exhibits.

22 MS. BRIER: Thank you, Your Honor.

23 THE COURT: Anything else you want to add, Mr.  
24 Schneider, before we finish?

25 MR. SCHNEIDER: No, just -- no.



1 THE COURT: Okay. And since he hasn't submitted a  
2 declaration, there's no cross examination.

3 MS. BRIER: No cross.

4 THE COURT: Okay. All right. Let's begin with  
5 Mr. Faraj. That's next, right?

6 Yeah, let's just -- why don't you tell me what  
7 we've got here.

8 MR. McCARRICK: T.J. McCarrick, Kirkland & Ellis,  
9 on behalf of the Debtors. We have, I believe, the cross  
10 examination of Mr. Faraj. I believe Your Honor said  
11 yesterday that you would consider his expert report as the  
12 testimony that he is offering here, subject to cross  
13 examination. I have two binders I'm happy to hand up to the  
14 Court and then proceed, unless you don't want any more  
15 binders.

16 THE COURT: I do, I do. Absolutely. All right,  
17 Mr. Faraj, you're going to be sworn in. If you would raise  
18 your right hand.

19 CLERK: -- solemnly swear or affirm all the  
20 testimony you're about to give (indiscernible) is the truth  
21 and the whole truth?

22 THE WITNESS: I do.

23 THE COURT: All right, thank you, Mr. Faraj.

24 MR. McCARRICK: May I proceed?

25 THE COURT: Where are you located, Mr. Faraj?

1 THE WITNESS: I'm in Australia, Your Honor.

2 THE COURT: Oh. What time is it there?

3 THE WITNESS: It's 12:30 and I've been watching  
4 yesterday, so yesterday, so I've been up for about 37 to 40  
5 hours straight.

6 THE COURT: Not a good idea. All right. Mr.  
7 McCarrick, go ahead.

8 MR. McCARRICK: All right.

9 CROSS EXAMINATION OF HUSSEIN FARAJ

10 BY MR. McCARRICK:

11 Q Mr. Faraj, you've never testified as an expert before,  
12 correct?

13 A No, I haven't.

14 Q You've never prepared a fair value analysis of any  
15 digital asset, correct?

16 A No, I haven't.

17 Q You've never prepared a fair value analysis of any  
18 financial instrument, true?

19 A That's true.

20 Q You've never prepared a true value analysis of any  
21 digital asset, correct?

22 A For R&D -- sorry. For R&D yes. For Courts, no.

23 Q Okay, and let's just distinguish that. When you say  
24 research and development, what you're talking about is  
25 training your proprietary AI model, correct?

1 A Correct.

2 Q You've never performed a true value analysis for any  
3 external third party for a cryptocurrency asset, true?

4 A No, just for ourselves. It's true.

5 Q And when you're training your AI model, that's not  
6 something you've opened up to the world, right? Your AI  
7 model hasn't been studied or peer tested by anyone outside  
8 of your company, true?

9 A It hasn't been studied or tested, but it was opened up  
10 to the world to actually utilize it, use it, and make sure  
11 it works.

12 Q Okay. You've never prepared a formal analysis of the  
13 intrinsic value of a digital asset before, have you?

14 A Not (indiscernible). The only thing I do is or R&D  
15 (indiscernible).

16 Q Okay, so for the rest of my questions about whether or  
17 not you prepared an analysis, I'm going to be excluding your  
18 internal research and development efforts. I'm just asking  
19 whether it's for third parties or for a Court. Is that  
20 fair?

21 A That's fair.

22 Q Okay. So you've never prepared a formal analysis of  
23 the intrinsic value of any financial instrument, true?

24 A True.

25 Q You've never prepared a speculative value analysis of a

1 digital asset, true?

2 A True.

3 Q You've never prepared a comps analysis of any digital  
4 asset, true?

5 A That's true.

6 Q In fact, this is the very first case in which you're  
7 offering an opinion to any external audience about the value  
8 of a digital asset, fair?

9 A For Court purposes, yes.

10 Q Or what other purposes?

11 A I do assessments valuation for clients that come in who  
12 want to deploy a cryptocurrency or deploy a project, so I've  
13 got to give them advice on all the tokenomics. I have to go  
14 very deep into economics and assessments on digital asset.

15 Q Okay, and when you give them that assessment, are you  
16 giving them a value?

17 A I'm giving a proposition on how to obtain the value  
18 depending on the tokenomics, and how the tokenomics function  
19 inside the crypto space to actually derive a proposed value  
20 when they go to the market and a proposed growth value when  
21 they're on the market.

22 Q So I just want --

23 THE COURT: I just want to ask you, just speak a  
24 little more slowly. I understood you so far, but it would  
25 help if you just spoke a little more slowly, okay?

1 THE WITNESS: I will. I'll slow down.

2 THE COURT: All right, go ahead.

3 MR. McCARRICK: -- Your Honor.

4 BY MR. McCARRICK:

5 Q Mr. Faraj, I just want to make clear, have you ever  
6 prepared a valuation analysis for any third party?

7 A No. Except property, sorry, just because your question  
8 is very broad. So when it comes to feasibility and  
9 assessments by some property infrastructure, I've done a lot  
10 of them. When it comes to digital assets, no, not for a  
11 third party.

12 Q Okay, so setting aside property or real estate, you've  
13 never performed a valuation analysis of a digital asset for  
14 a third party, true?

15 A Not a third party. That's true.

16 Q All right. This is the first -- withdraw. The first  
17 person you've ever asked to adopt a valuation analysis that  
18 you've performed of a digital asset as the judge in this  
19 case, correct?

20 A It is, an official, for Court purpose, yes.

21 Q The first time you've ever formally addressed in a  
22 public setting -- withdrawn. The first person you've ever  
23 formally addressed in a public setting to provide evaluation  
24 of the digital asset is the judge in this case, correct?

25 A Correct.

1 Q You don't have a degree in finance, do you, sir?

2 A I don't have a degree in finance.

3 Q You don't have a degree in business, correct?

4 A I don't have a degree in business. I have diplomas and  
5 I have extensive experience in multifacets of business.

6 I've done over 7 to 10 billion dollars of contracts  
7 globally, but I don't have a degree (indiscernible).

8 Q You don't have a degree in economics, correct?

9 A I don't have a degree in economics, but I actually give  
10 assistance and aid to countries and governments who require  
11 assistance in regards to digital assets and likewise, and I  
12 actually, again, I've got function on the ground. I don't  
13 have a qualification.

14 Q Okay. You don't have any degrees in valuation or  
15 valuation efforts, true?

16 A It's very true. I've got extensive experience, like I  
17 said, non-digital, that's for third parties. For digital,  
18 just because you haven't said digital space, I don't have  
19 any degree for it.

20 Q You're not a certified financial modeling and valuation  
21 analysis -- analyst, are you?

22 A Are we talking about digital space or are we talking  
23 about external? Because experience -- depends what you're  
24 after. Experience or qualification?

25 Q Well, I asked if you're certified. That's

1 qualification, correct?

2 A Well, certification doesn't only mean qualification  
3 because if you work in an industry --

4 THE COURT: -- speak a little more slowly.

5 THE WITNESS: Sorry, Your Honor, I'll slow down.

6 THE COURT: Okay?

7 THE WITNESS: I'll go more slow.

8 BY MR. McCARRICK:

9 A When you say certification, I mean, you can be  
10 certified by your peers. It's not -- a certification is a  
11 piece of paper. But I'll take it that you're talking about  
12 university qualifications, and the answer is no.  
13 Certification by peers, I've got plenty.

14 Q Let's break it down. First, you don't have a formal  
15 certification, a la a degree from a professional  
16 institution, correct?

17 A Correct.

18 Q Okay, and when you say you can be certified by your  
19 peers, what's that look like?

20 A So that's extensive experience that I've been in the  
21 industry, especially in business and economics. I've gotten  
22 plenty of contracts. I've negotiated a lot of large scale  
23 projects. I'm a strategic partner to over 168 global  
24 companies, and some Fortune 500 companies. I get (audio  
25 glitch) negotiate deals extensively. So again, if you want

1 experience I have it. If you want a piece of paper, I don't  
2 have it.

3 Q Okay. All that experience that you just talked about,  
4 none of it involved providing a valuation analysis to any of  
5 those companies, individuals, or peers, true?

6 A Not for digital assets.

7 Q Correct, not for digital assets, right?

8 A Correct.

9 Q Okay. You don't have professional accreditations as  
10 evaluation professional, true?

11 A Very true.

12 Q You haven't taken a single course in valuing financial  
13 instruments, including digital assets, true?

14 A Now I've created the tools that we currently use  
15 through research and development, but you're saying  
16 (indiscernible), so you're correct.

17 Q You've never worked at a valuation firm?

18 A No, I haven't.

19 Q And you've never worked at an investment bank, correct?

20 A Correct.

21 Q You've never worked as an investment banker, true?

22 A True.

23 Q Well, for ten years, you told the world that you were  
24 an investment banker, didn't you?

25 A That's true.



1 MR. McCARRICK: All right. So Mr. Lopez, can we  
2 display Celsius Exhibit 115, which is your LinkedIn profile  
3 as of 72 hours ago. Can we have sharing privileges --

4 THE COURT: Deanna, can you allow --

5 MR. McCARRICK: --for Mr. Lopez?

6 THE COURT: -- Mr. Lopez to share, please?

7 CLERK: All right, he's a cohost.

8 THE COURT: Thank you very much, Deanna.

9 MR. McCARRICK: Thanks. And Mr. Lopez, it's  
10 Celsius Exhibit 115, which is Mr. Faraj's LinkedIn profile  
11 as of 72 hours ago. Can we go to Page 2 of the PDF?

12 BY MR. McCARRICK:

13 Q This is the document we reviewed during your  
14 deposition, isn't it, Mr. Faraj?

15 A Yes, it is.

16 Q And can we look at Page 4 of the PDF, specifically the  
17 Advantage Group Australasia entry? You held yourself out  
18 here as an investment banker at Advantage Group Australasia,  
19 correct?

20 A I did.

21 Q And that was false, wasn't it?

22 A No, not at the time. I actually thought we were  
23 investment bankers. Like, if I put it down on a piece of  
24 paper, look, I know a lot more now than I knew when I was  
25 actually doing this job. So in this space, especially when

1     you're doing international finance and international  
2     governance, one of the things that most people call  
3     themselves is investment bankers. Now, you're asking, do I  
4     think it's true now; no, because I know a lot better. I  
5     know much more now, so I would not agree that it's a true  
6     proposition. I would call myself an investment specialist  
7     instead of an investment banker. But at the time that this  
8     thing was done, it was true in terms of what I thought it  
9     was.

10    Q     So let me understand this. Is it your testimony that  
11    you considered yourself an investment banker because you  
12    were a -- you brokered financial arrangements between  
13    different government entities?

14    A     I considered myself an investment banker because I  
15    didn't understand what that role actually was, and I thought  
16    my role was an investment banker. But now I know a lot  
17    better and that's why when you gave me advice and I saw it -  
18    - I really haven't seen that for a long time -- I actually  
19    went and changed it, just as he told me to.

20    Q     Well, if you didn't know what an investment banker was,  
21    why would you tell the world that's what you were?

22    A     Because that's what we perceived we were. So in the  
23    role that I was on, especially when I started, I mean, I was  
24    very young when I started Advantage Group.

25    Q     Well, how did you perceive that you were an investment

1 banker, if you didn't know -- let me finish the question.  
2 How do you perceive that you were an investment banker if  
3 you didn't know exactly what it meant to be an investment  
4 banker?

5 A Because the way it was explained to us when we were  
6 very young and going in this industry --

7 THE COURT: Mr. McCarrick --

8 THE WITNESS: Is that our role --

9 BY MR. McCARRICK:

10 Q Okay, and just to be clear, you changed your LinkedIn  
11 profile in the past 24 hours, correct?

12 A Yes, exactly like you told me I should. I actually  
13 agree with you. I agree with you that it should not be an  
14 investment banker and I went and changed it straightaway.

15 MR. McCARRICK: Okay. You can take that down, Mr.  
16 Lopez.

17 BY MR. McCARRICK:

18 Q I want to talk about your expert report. You didn't  
19 write each and every word of this report, correct?

20 A No, I didn't.

21 Q You used artificial intelligence to draft the report,  
22 correct?

23 A Correct. I compiled it with artificial intelligence  
24 and I basically, like I explained to you in the deposition,  
25 I guided the artificial intelligence. I gave the data. I

1 gave it the boundaries. I gave my evaluation reports and I  
2 said to learn from my evaluation reports. I then compiled  
3 all the data utilizing artificial intelligence.

4 Q Okay. Mr. Faraj, isn't it true that it took you longer  
5 to read the report than it took you to write it?

6 A Very true.

7 Q You generated this 300-plus page report in 72 hours,  
8 correct?

9 A Actually, the 300 pages -- more than 300 pages, but you  
10 got about 140, 150 pages. That was the writing side. I  
11 mean, you've got 1.5 spacing, reduce the 1.5 spacing to 1.  
12 You've probably got about 90 to 100 pages and I did it  
13 probably in about, yeah, three days. About nine hours to  
14 ten hours in compilation.

15 Q Okay. Well, leaving the font and the pages out of it,  
16 it took you -- whatever's in this report -- 72 hours to  
17 generate, right?

18 A Correct, correct. It's not all of it, 72 hours because  
19 a lot of the data from page one hundred and whatever it was  
20 onwards, we already had.

21 MR. McCARRICK: All right. Mr. Lopez, can we look  
22 at Celsius Exhibit 113, which is a forensically collected  
23 copy of a tweet that Mr. Faraj posted at 3:27 p.m. on  
24 October 9th, 2023. If we go to Page 2 of the PDF. And can  
25 we blow up the top?

1 BY MR. McCARRICK:

2 Q Mr. Faraj, this is a tweet that you issued on  
3 October 9th, 2023, correct?

4 A Correct.

5 Q And we talked about this during the deposition, right?

6 A We did.

7 MR. McCARRICK: Your Honor, at this time, we'd  
8 move Celsius Exhibit 113 into evidence.

9 THE COURT: Hearing no objection, it's in  
10 evidence.

11 (Celsius Exhibit 113 entered into evidence)

12 BY MR. McCARRICK:

13 Q All right, Mr. Faraj. You write here, "I haven't had  
14 much time to follow the issues with CEL." Do you see that?

15 A Correct.

16 Q And that's true. Two days before you filed your expert  
17 report in this case, you hadn't had much time to follow the  
18 issues with CEL, right?

19 A That's 100 percent correct. That's after we finished  
20 doing our investigation on CEL. So from the time we  
21 finished investigating CEL post FTX collapse and the FTX  
22 issue from past that, we haven't had much time. We've been  
23 restoring our network.

24 Q All right. And you also wrote, "We completed the  
25 entire assessment within 72 hours. In reality, this is

1 usually a six- to eight-week job." You see that?

2 A That's correct.

3 Q So you did a 1,000-plus hour job in 72 in this case.

4 Is that your testimony?

5 A That's 100 percent correct. That's my testimony.

6 Q And you acknowledge, Mr. Faraj, that 72 hours is  
7 nowhere near enough time to generate a comprehensive report,  
8 true?

9 A I acknowledge for someone else, it's not near enough,  
10 but (indiscernible) to me, I can actually do it. Without  
11 artificial intelligence, without -- let me finish the  
12 answer, (indiscernible). If I wasn't utilizing artificial  
13 intelligence to compile the information, compile the  
14 information, then yes, it's impossible. But with these days  
15 with artificial intelligence and the utilization of  
16 artificial intelligence, it's doable. I mean you got it in  
17 front of you and you've done the tests on the metadata. So  
18 the metadata has actually told you that it was nine hours.

19 THE COURT: What AI platform do you use in  
20 preparing your report.

21 THE WITNESS: Your Honor, we used two. So in the  
22 early days, we had NAVIS which is NuGenesis Artificial  
23 Validation Intelligence System. It's an AI that was trained  
24 by --

25 THE COURT: You're going to have to go -- you're

1 going to have to speak more slowly.

2 THE WITNESS: Sorry. I'm going to slow down.

3 I'll sit down. Okay. So we had, the early information  
4 which you see is in the boxes. They were compiled a long  
5 time ago. We were investigating CEL for a different matter.  
6 So when we were investigating CEL and FTX, we actually  
7 compiled a lot of information about CEL. Now, that data was  
8 compiled and used through one of the systems that we  
9 developed, which is NuGenesis Artificial Validation  
10 Intelligence System.

11 It's the same system that caught Sam Bankman  
12 (audio glitch) scam. All right, it was the system that was  
13 able to tell that Sam had created fake and synthetic coins  
14 on the market. That AI system is the same system we taught  
15 how to predict the market. So in terms of the report, about  
16 200 or 150 pages, whatever it is, that information was  
17 already compiled. So that information we already had access  
18 to. Now with the news, the further access I was using Open  
19 AI.

20 So utilizing the Open AI platform, I actually took  
21 all the information that I had. I taught the Open AI, and  
22 you'll see, I've got a, I've got the whole data dump on how  
23 we used it. So everything that the AI was assessing was the  
24 stuff I taught it. I gave it to --

25 THE COURT: I only asked you which platform you

1 used. Go ahead, Mr. McCarrick.

2 THE WITNESS: Sorry, Your Honor. Open AI. Open  
3 AI. ChatGPT-4. Open AI.

4 BY MR. McCARRICK:

5 Q Mr. Faraj, just to clear up the record, it's your  
6 testimony you used two different AI tools in preparing  
7 different part of this report, correct?

8 A That's correct.

9 Q Right? There's the Exhibit 2 attached to your report,  
10 which is a close to 200-page chart, summarizing public  
11 articles, correct?

12 A That's correct.

13 Q And that's what you used NAVIS NuGenesis' own internal  
14 platform to generate, correct?

15 A That's correct.

16 Q And the report itself that you generated for this case,  
17 you used Open AI to do that, correct?

18 A I didn't generate the report. What I did is I compiled  
19 the report. There's a very big difference between the two  
20 words. But yes, that's correct. I compiled the report  
21 using ChatGPT.

22 Q Okay. Well, whatever you used, you agree with me, Mr.  
23 Faraj, that 72 hours is nowhere near enough time to generate  
24 a comprehensive report, right?

25 A Okay, we completed the entire assessment, the



1 assessment with the full valuation assessment --

2 THE COURT: Mr. Faraj. Mr. Faraj --

3 THE WITNESS: Sorry, Your Honor.

4 THE COURT: Listen to the question and just answer  
5 the question. Ask your question again.

6 BY MR. McCARRICK:

7 Q Mr. Faraj, if it was going to be comprehensive, 72  
8 hours was not enough to generate this report, true?

9 A Correct.

10 Q It's your testimony that you only spent eight to ten  
11 hours editing this 372-page document, correct?

12 A Five or take. I don't want to lie to you and give you  
13 the wrong answer.

14 Q Okay. Do you have any reason to disagree with me,  
15 that's over half a page every minute?

16 A I have no reason to disagree with you.

17 Q Do you agree with me, sir, that there are errors in  
18 your report, true?

19 A I agree. I agree and -- yeah.

20 Q And in your view, it would be impossible to prepare a  
21 report in 72 hours without introducing errors, correct?

22 A That's true.

23 MR. McCARRICK: Mr. Lopez, can we pull up Celsius  
24 Exhibit 80, which is Docket No. 3752. That's Mr. Davis'  
25 request to submit Mr. Faraj's expert report and report

1 attached to it. It should be Tab 80 in your binder, Your  
2 Honor.

3 THE COURT: Okay.

4 MR. McCARRICK: And I want to look at Page 32 of  
5 the PDF. And let's -- you see the section there titled  
6 Introduction to Tokenomics and Crypto Evaluation.

7 THE COURT: Just tell me, are you using numbers at  
8 the bottom of the page or the top of the page?

9 MR. McCARRICK: Oh, I'm sorry, Your Honor. So I'm  
10 using the PDF page, but if you want the --

11 THE COURT: You -- that's okay.

12 MR. McCARRICK: I can get it for you.

13 THE COURT: PDF page is the number at the bottom,  
14 right?

15 MAN: -- no number at the bottom.

16 THE COURT: Well, my copy has numbers at the  
17 bottom.

18 MR. McCARRICK: There's, yeah, numbers at the  
19 bottom and numbers at the top, but if you just give me one  
20 second, I can get it for you, Your Honor.

21 MR. WEEDMAN: Page 24 on the bottom.

22 THE COURT: Thank you.

23 MR. McCARRICK: Thank you, Mr. Weedman.

24 THE COURT: Go ahead.

25 BY MR. McCARRICK:

1 Q All right. This says, "Introduction to Tokenomics and  
2 Crypto Valuation." See that?

3 A I do.

4 Q And the first paragraph starts, "In the burgeoning  
5 world of cryptocurrencies." Do you see that?

6 A I do.

7 Q and the next paragraph repeats that first paragraph,  
8 all 92 words, word for word, correct?

9 A Correct.

10 Q You didn't catch that error during the review, did you?

11 A No, I didn't.

12 Q And your testimony is that we shouldn't worry about  
13 that because you didn't make any major mistakes on the  
14 actual fair value analysis, correct?

15 A No, that's what I think. It's a copy and paste issue  
16 and I take it out of the format of the AI and I pasted it  
17 here. So I go over every single thing and as you can see in  
18 the -- I don't know if you've got to see the transcript of  
19 the AI, but if you go through the AI information, you'll see  
20 I actually review on that and copy and paste it. So when  
21 it's come here, it's just a double copy and paste by  
22 accident.

23 Q Okay. When you were reviewing your final report, you  
24 didn't catch this, did you?

25 A I didn't. I didn't catch it.

1 Q All right. It's true, sir, that you also make errors  
2 in your fair value analysis as well?

3 A You've got to open up and show it to me because I don't  
4 know if it's the fair value assessment or if it's one of the  
5 other paragraphs.

6 Q Okay. Do you agree with me that your fair value  
7 assessment includes the trading data you selected for the  
8 analysis, right?

9 A Correct.

10 Q And selecting the trading window that is most  
11 representative for purposes of the fair value analysis is  
12 part of your fair value analysis, right?

13 A No, it's part of the document which says we're going to  
14 do the fair value assessment on. It's not the fair value  
15 assessment.

16 Q Well, let me understand this. Is it your testimony  
17 that determining what trading window is most representative  
18 is not part of your fair value analysis?

19 A No. What I'm saying is, it's introduction to the  
20 analysis. So it's the part where we introduce what we're  
21 going to do in the analysis. It's not the actual analysis.  
22 But yes, there is a mistake there. I acknowledge it.

23 Q Well, it's actually what you use to select the trading  
24 dates that you analyzed, right?

25 A No. I actually used the dates I selected. It's what I

1 actually wrote down by accident when I was doing the report.

2 Q Okay. Is it your testimony that you wrote it down by  
3 accident or that the artificial intelligence wrote it down  
4 by accident?

5 A I composed through the AI. So if you got the AI and  
6 you look at AI data, you'd see that I would have given it  
7 the wrong data for that period.

8 Q Okay. Do you agree that in conducting your fair value  
9 analysis, it was essential to consider sales trading  
10 history, correct?

11 A I do.

12 Q And selection of trading days is instrumental to  
13 provide insights into an asset's true value?

14 A It's true.

15 Q And to make sure those insights are accurate, you have  
16 to neutralize the impact of deliberate price manipulation,  
17 correct?

18 A I do.

19 Q And it was paramount in your analysis to hone in on the  
20 most stable market conditions around CEL trading, correct?

21 A Correct.

22 MR. McCARRICK: All right. Mr. Lopez, can we put  
23 up Exhibit 80 again, and I want to go to Page 95 of the PDF.

24 THE COURT: Are we looking at the numbers at the  
25 top or the bottom?

1 MR. McCARRICK: So the answer, Your Honor, is, I -  
2 - it's going to be page on the bottom.

3 THE COURT: Okay.

4 MR. McCARRICK: It should be page --

5 THE COURT: I don't care which you use. Just try  
6 and be consistent.

7 MR. McCARRICK: Yep.

8 MAN: Eighty-seven.

9 MR. McCARRICK: Yeah, 87 to 88, Your Honor.  
10 That's what we're going to be looking at.

11 THE COURT: At the top or bottom?

12 MR. McCARRICK: We're going to be looking at --  
13 give me one second.

14 THE COURT: There's page something of 378 at the  
15 top and there's something of 172 at the bottom.

16 MR. McCARRICK: Yes. The slip sheet with the  
17 exhibit number is what's taking it off by one, so it should  
18 be -- give me one second.

19 THE COURT: Isn't there -- the Court ledger's at  
20 the top and it says -- it has the ECF docket number and a  
21 page of 378.

22 MR. McCARRICK: Correct, but Your Honor, if you  
23 look at Page 1, there won't be that header because it's --

24 THE COURT: Okay, but there is here, so just tell  
25 me which page to go look at.

1 MR. McCARRICK: Understood, Your Honor. Give me  
2 one second. Let's do it this way. Here's what we're going  
3 to do, Your Honor.

4 THE COURT: What's the complication?

5 MR. McCARRICK: It's just slippage by a number, is  
6 what the complication is.

7 THE COURT: Okay. All right. I'm there. It's  
8 Page 94 of 378.

9 MR. McCARRICK: Thank you, Your Honor.

10 THE COURT: That's where I am.

11 MAN: Thank you, Your Honor.

12 MR. McCARRICK: Thank you, Your Honor. Take --  
13 let's just take this down. Oh, I'm sorry, it's going to be  
14 Page 95 of 378 --

15 THE COURT: Okay.

16 MR. McCARRICK: -- what we're looking at and we're  
17 looking at the second paragraph.

18 THE COURT: Got it.

19 BY MR. McCARRICK:

20 Q And do you see where it says, "The values from June 9th  
21 to June 12th might be the most representative of CEL's share  
22 value in the least manipulated market conditions."

23 A You mean to me? Do you want me to answer? Sorry.

24 Q Yes. Do you see the last sentence --

25 A Yes, I do, I do. I do.

1 Q And June 9th to 12th, you didn't use all of the trading  
2 data from those dates in performing your price analysis,  
3 correct?

4 A No. It should've -- no. It should've been May the  
5 21st to June the 9th, but that's a mistake.

6 Q And you didn't use --

7 A -- is correct. Sorry.

8 Q So you didn't use June the 10th to June the 12th,  
9 correct?

10 A No, I didn't.

11 Q So when you say that June 9th to June 12th might be the  
12 most representative sample of CEL's fair value in the least  
13 manipulated market conditions, that's incorrect?

14 A It's incorrect. Correct.

15 Q Okay. Let me ask you this. Since we pointed out these  
16 errors to you during your deposition, have you gone back to  
17 check for other errors?

18 A No, I haven't.

19 Q All right. Sitting her today, you have no idea what  
20 other errors there might be in your report, correct?

21 A Well, I doubt there'll be. You would have put them up  
22 already and told me. And they're not -- I don't need to  
23 rely on them on my assessment. So once we get the  
24 assessment and you understand the assessment methodology,  
25 most of the data that was published in (indiscernible)



1 between the petition and the pause date is not relied on.

2 But go ahead, sorry.

3 Q Okay. Mr. Faraj, around 1 p.m. yesterday, you publicly  
4 posted a number of materials on DropBox, correct?

5 A Correct.

6 Q That included an artificial intelligence extraction  
7 report?

8 A Correct.

9 Q That document reflects what you did with your  
10 artificial intelligence software to generate the report in  
11 this case, correct?

12 A Yes, it is.

13 MR. McCARRICK: All right, Mr. Lopez, can we bring  
14 up Celsius Exhibit 120? And this document is not internally  
15 paginated, so --

16 THE COURT: Okay.

17 MR. McCARRICK: We're going to try with the PDFs.  
18 If you can go to the first page.

19 BY MR. McCARRICK:

20 Q That -- this is the artificial extraction report we  
21 were just discussing, correct?

22 A That's 100 percent correct.

23 MR. McCARRICK: Your Honor, we'd like to move  
24 Celsius Exhibit 120 into evidence.

25 THE COURT: Hearing no objection, it's in

1 evidence.

2 BY MR. McCARRICK:

3 Q And Mr. Faraj, what you're doing here is providing  
4 instructions to the artificial intelligence software that  
5 you used, right?

6 A Correct.

7 Q You provide certain data or information at times,  
8 correct?

9 A Correct.

10 Q Fair to say you can go line by line to understand where  
11 or how the artificial intelligence sourced all of the  
12 statements that it makes about tokenomics, right?

13 A I did. When they say to line to line, let me explain.  
14 So it used my tokenomics report. If you go to the first  
15 page of this, I actually fed it my design and my report on  
16 how we do tokenomics, and I asked it to analyze it and learn  
17 my reports, so it can actually learn my style. And then I  
18 asked it to -- basically if you go to the first page, you'll  
19 see.

20 Q Okay. We'll get to the first page in a second, but I  
21 want to start by, you also use the artificial intelligence  
22 software to respond to some of the Debtors' discovery  
23 requests in this case, correct?

24 A I used -- yes, correct. I use AI to reply to a lot of  
25 emails. I'm very bad at grammar. So I put my language and

1 I always ask it to reply to my things.

2 MR. McCARRICK: All right. Mr. Lopez, can we go  
3 to PDF Pages 382 and 383?

4 BY MR. McCARRICK:

5 Q And it says, "We need to reply to the following." Do  
6 you see that, Mr. Faraj, on the left?

7 A Yeah.

8 Q And then it lists all of the requests that I had  
9 emailed you. Is that right?

10 A Yep. That's correct. I fed it the email that you gave  
11 me and I asked it to write a reply.

12 Q And one of the things we asked to produce were  
13 documents and communications including direct messages, text  
14 messages, and email communications between yourself and any  
15 person including but not limited to Otis Davis, correct?

16 A Correct, in regard to the Chapter 11 proceedings.

17 Q Okay. You're aware that Mr. Davis testified yesterday  
18 that there were written communications, right?

19 A (indiscernible) he said it. He said, I'm not too sure.  
20 I didn't hear it.

21 Q Okay. In fairness --

22 A If you tell me he did, he did.

23 Q You didn't turn over to the Debtors, any of your direct  
24 messages or WhatsApps with Mr. Davis, did you?

25 A No, I didn't.

1 Q And you didn't post those to the internet yesterday  
2 when you posted all this other material, did you?

3 A You asked me for things related to Chapter 11. If  
4 there's something that's unrelated to Chapter 11 I did  
5 (indiscernible).

6 Q Is it your testimony that what you were talking about  
7 with Mr. Davis is not relevant to these proceedings?

8 A Sitting here right now, the phone call discussions we  
9 had may -- discussed, but I don't think there's anything in  
10 relevance to the Chapter 11. Asking -- him asking me to do  
11 an expert over -- well, I offered an expert report, but if  
12 that's a communication that you think is part of the Chapter  
13 11, I don't take that as being part of the Chapter 11.

14 Q Okay. Well, fair to say and -- well, withdraw. I'm  
15 not asking you about your oral communications. I want to  
16 talk about your written communications. Did you or did you  
17 not have written communications with Mr. Davis about these  
18 Chapter 11 proceedings?

19 A I've got to go over it. I've got to check all my  
20 messages.

21 Q So --

22 A I can't remember between (indiscernible) message. I've  
23 got a lot of things that I do. I just don't want to lie to  
24 you. I don't want to give the wrong answer.

25 Q Okay. Fair to say you had a server issue on your side

1 that initially prevented you from responding to this  
2 request, right?

3 A That's true.

4 Q And we had emailed you back again saying that we  
5 reserve the right to move to exclude your testimony in the  
6 event that you didn't sit for a deposition, engage in  
7 discovery, correct?

8 A That's correct.

9 Q And you used AI to generate a response to that email  
10 too, correct?

11 A Correct.

12 Q All right. Can we look at Page 389 to 390 of this PDF?  
13 The HU is you, correct, Mr. Faraj?

14 A That's correct, a hundred percent.

15 Q And you copied and pasted my email to you there,  
16 correct?

17 A Hundred percent.

18 Q And then you see where you write, "Please reply to this  
19 email in a smartass way."

20 A Yeah, a hundred percent. I told it to reply in a  
21 smartass way, and then I realized the server issues was ours  
22 and you weren't just sending me emails in a row without  
23 reading my emails.

24 Q Okay, but your initial reaction was to reply to me in a  
25 smartass way, correct?

1 A Yes, by AI. So in AI, when you say smartass way by AI,  
2 it's not like a human being, being a smartass. Right? It's  
3 just a funny way it replies basically saying come on, you  
4 just sent me the first email. I've already replied to you.  
5 Come on, you're already sending me more emails? So that's  
6 what it refers to.

7 Q Okay, so it's your testimony there's a difference  
8 between what smartass means to people like you and me and  
9 what it means to the AI machine?

10 A Yeah, hundred percent.

11 MR. McCARRICK: Okay. Take that down Mr. Lopez.

12 THE COURT: It has a distinct meaning to the  
13 Court, Mr. Faraj.

14 THE WITNESS: My apology, Your Honor.

15 THE COURT: I take Court proceedings seriously.

16 THE WITNESS: My -- Your Honor, at the time, to be  
17 fair -- and I agree with you a hundred percent --

18 THE COURT: Did you produce --

19 THE WITNESS: I got emails --

20 THE COURT: Let me ask you though. Stop. Did you  
21 produce copies of your communications to the Debtors'  
22 counsel? Yes or no?

23 THE WITNESS: Your Honor, I don't think I've got  
24 anything in writing.

25 THE COURT: Did you hear my question? No --

1 THE WITNESS: No. No.

2 MR. McCARRICK: Fair to say, sir -- actually, you  
3 can leave that up, Mr. Lopez. We're going to be going back  
4 there.

5 BY MR. McCARRICK:

6 Q You didn't just use AI correct grammar, respond to  
7 discovery requests, right? You used it to select the  
8 methodology, true?

9 A No, I gave it the methodologies that I wanted to use  
10 through my tokenomics report that I structured, and then I  
11 asked her to go through those tokenomics.

12 Q Okay, let's go to Page 156 of the PDF.

13 A Yes, please.

14 Q Okay, can you highlight the HU entry there and what's  
15 under it?

16 A Yeah.

17 Q This is you asking the AI intrinsic valuation of CEL,  
18 and can this method be used for determining value of CEL on  
19 pause date. Do you see that?

20 A Yes, I do.

21 Q And that's you asking the AI whether or not that's a  
22 proper valuation?

23 A Yes, but you -- yes, but you've got to go to the start  
24 of the AI and what I trained the AI to start with.

25 Q Okay. I'm just asking you about this and right here --

1 A Yes, yes, correct.

2 Q Okay. Let's do the same thing on Page 157.

3 A Go ahead.

4 Q And at the bottom, can we highlight the HU entry? You  
5 say speculative valuation of CEL, and is this method  
6 acceptable to be used to determine the value of CEL on the  
7 pause date. Do you see that?

8 A Correct.

9 Q And that's what you're asking the AI there as well,  
10 correct?

11 A correct.

12 Q Okay.

13 THE COURT: Why did you have to ask the AI that? Do you  
14 have any professional experience as to what's appropriate,  
15 an appropriate methodology for determining the value of CEL  
16 on the pause date? Yes or no.

17 THE WITNESS: Yes, I do, Your Honor.

18 THE COURT: Go ahead, Mr. McCarrick.

19 MR. McCARRICK: Okay. I want to talk value of  
20 cryptocurrency, and now we can take that down, Mr. Lopez.  
21 Thank you.

22 BY MR. McCARRICK:

23 Q Do you agree with me there are inherent challenges to  
24 valuing any cryptocurrency?

25 A I do.



1 Q There's an entire section in your report titled,  
2 Inherent Challenges in Cryptocurrency Valuations, correct?

3 A I do.

4 Q And your view is that there is no way to come up with a  
5 true, exact value for a digital asset, correct?

6 A Correct.

7 Q And in this specific case, your view is that it's  
8 nearly impossible to achieve pinpoint accuracy and  
9 evaluation of CEL, correct?

10 A Correct.

11 Q I want to talk a little bit about your methodology.  
12 You applied what you call a best value analysis, correct?

13 A A fair value assessment, correct.

14 Q Okay, a fair value assessment is the methodology that  
15 you used?

16 A That's what we call it, correct.

17 Q And that's a method that you personally developed,  
18 correct?

19 A Correct.

20 Q That's not a method that's widely adopted in terms of  
21 valuing cryptocurrency, correct?

22 A Honestly, I don't know what's widely accepted in  
23 adopting crypto, what other people do in assessments.

24 Q Okay --

25 A I don't know -- I don't know.

1 Q You gave a deposition in this case, didn't you, Mr.  
2 Faraj?

3 A Yeah. I did.

4 Q And you took the same oath that you took here today?

5 A I did/

6 Q And you told the truth in that deposition?

7 A I did.

8 MR. McCARRICK: Okay. Let's look at Page 71,  
9 Lines 6 to 8 in the deposition, and could I have a copy of  
10 it to hand to the Court? There's two volumes. This is  
11 going to be from volume one (indiscernible).

12 THE COURT: Thank you.

13 BY MR. McCARRICK:

14 Q Mr. Faraj, did I ask this question and did you give  
15 this answer?

16 "Q And has that -- is that method widely adopted to  
17 value cryptocurrency?

18 "A No, it's not at all."

19 That's the testimony you gave, correct?

20 A Yeah. Correct.

21 MR. McCARRICK: Okay, you can take that down, Mr.  
22 Lopez.

23 BY MR. McCARRICK:

24 Q You agree with me that your fair value method hasn't  
25 been peer tested, correct?

1 A Under the fair value assessment, the criteria, no.

2 Q You're not aware of a single investment bank that  
3 publicly reports the fair value of any platform-specific  
4 cryptocurrency token, are you?

5 A No.

6 Q You're not aware of any investment bank that publicly  
7 reports the intrinsic value of any -- withdrawn. To  
8 calculate the fair value of CEL token in this case, you  
9 calculated what you believe to be the fair value of CEL  
10 before June 12th, 2022, correct?

11 A Correct.

12 Q In other words, you calculated fair value from  
13 immediately before the pause date, correct?

14 A It wasn't the -- yes, it is the pause date, but yes, it  
15 was because of the market this like -- sorry. The market is  
16 (indiscernible) on the actual network on this period. But  
17 yes, you're correct.

18 Q So let me just make sure I break down your testimony.  
19 Your testimony is you selected pre-June 12th, 2022 because  
20 it's your view that the trading window you selected was the  
21 least manipulated and least dislocated range that you could  
22 have selected, right?

23 A That's correct. That's a hundred percent correct.

24 Q Okay. You didn't calculate the fair value of CEL token  
25 as of July 13th, 2022, the petition date, right?

1 A No. I looked at the data during that area and I said  
2 it was over inflated. I looked at volume to market cap  
3 ratios and all of it told me that that was a dislocated  
4 market. So I actually ruled that whole period out.

5 Q All right. You would agree with me that the fair value  
6 of CEL token decreased between the pause date, June 12th and  
7 the petition date July 13th, correct?

8 A As a value, myself, I would agree with you.

9 Q And you didn't look at how much it decreased, correct?

10 A No, because I looked at that area and it was a  
11 dislocated market. So the only way to deal with a  
12 dislocated market is to strike it out.

13 Q Understood. I'm just asking, you didn't basically take  
14 the walk between June 12th and July 13th to figure out how  
15 much the value of CEL decreased before the petition date,  
16 right?

17 A No, no. It was a dislocated market, so even if I  
18 looked at it, the data is actually -- it's no good. The  
19 data can't be used. Under dislocated market methodology,  
20 once there's a dislocated market, you can't actually utilize  
21 that data. It's not a fair assessment to utilize any data  
22 where there's a dislocated market.

23 Q All right. Let's talk about the pause date for a  
24 second. Do you agree with me that as of the pause date,  
25 there was not any intrinsic value left for the CEL token

1 because the platform was frozen, correct?

2 A From the pause date, I agree with you.

3 Q As of the petition date, CEL also had no intrinsic  
4 value, correct?

5 A I agree with you.

6 Q There's no -- there's intrinsic value to CEL -- there's  
7 -- withdrawn. There is no intrinsic value to the CEL token  
8 on the petition date because the CEL holder can't do  
9 anything with it as of the petition date, correct?

10 A I agree with you.

11 Q And the only remaining value for the CEL token as of  
12 the petition date is speculative value, correct?

13 A I agree a hundred percent with that. So what happens,  
14 you always (indiscernible) from intrinsic to speculative.

15 Q And when you say speculative value, what you're talking  
16 about is CEL's potential value in the future, correct?

17 A That's correct.

18 Q And what you're doing there, the analysis you're  
19 performing, is putting yourself in the position of a  
20 potential buyer of CEL right before the petition date,  
21 correct?

22 A That's correct because that's -- yeah.

23 Q What you're valuing is what you think the buyer thinks  
24 will happen with cell, correct?

25 A Correct, but I have to take that out -- again, I've got

1 to take out the period which I know the data is corrupt.

2 Then I have to do it in a period that's not corrupt.

3 Q Understood. If there's no future use case for the CEL  
4 token, you agree that it wouldn't even have speculative  
5 value, right?

6 A If it was announced, there was absolutely no use cases  
7 and it was completely a hundred percent said that it's going  
8 to be closed down and there was no other option, then all  
9 the speculative value would also go. But if there's any  
10 type of hope, any type of hope, then the speculative value  
11 actually increases.

12 Q And when you're talking about hope one of the things  
13 that you say you need to value or consider is the journey of  
14 CEL, its accomplishments in the amassed user base, right?

15 A Not in the crypto world. I mean, it's something that I  
16 would assess, but in the crypto world it's a gamble. Most  
17 people jump on crypto for a speculative -- the speculative  
18 increase. So they look at the all-time high that  
19 (indiscernible) had a long time ago, whenever, before the  
20 (indiscernible) market and then they'll say if I bought it  
21 now I'll buy it cheap. There's a chance that these will go  
22 back up to its all-time high if they restore it. That's how  
23 the spec -- sorry, the speculative value actually works.

24 Q Well, it's also your testimony that CEL's future  
25 speculative value assumes in part that's part of a corporate

1 reorganization, right?

2 A It can be anything. A speculative value crypto,  
3 doesn't have to be unique to CEL. If anyone decides to use  
4 it, if something happened and someone says it's got a hope,  
5 there's a restructure, it could be anything. At a given  
6 point, I mean, I can only go on information a customer has  
7 at a given point to do my assessment. I can't go on  
8 information that was granted after that because I can only  
9 assess something based on two things, is the data being  
10 positive or being not corrupt, so no dislocated market, and  
11 then what information that customer had when he was actually  
12 looking at the value at that date. Because I'm looking at  
13 the value for that period. I'm not looking at the value  
14 after that period.

15 Q All right. Let's turn back into it this way. You  
16 understand there's a corporate reorganization proposed in  
17 this case, correct?

18 A I do.

19 Q You're aware that that reorganization doesn't include a  
20 role for CEL token, correct?

21 A I do now, yes.

22 Q Are you aware of any corporate reorganization that has  
23 been formally proposed that had a role for CEL token?

24 A I'm not aware of it, no.

25 Q All right. The alternative to the proposed

1 reorganization here is a liquidation of CEL, correct?

2 A You're the lawyer. You know more than me.

3 Q Well, you gave a deposition in this case, correct?

4 A Yeah.

5 Q Okay. Let's go back to it. and let's --

6 A Yeah.

7 MR. McCARRICK: This is going to be Volume 2, for  
8 the Court's reference and it's going to be Page 309, Lines 9  
9 to 12. See if we can refresh your recollection.

10 BY MR. McCARRICK:

11 Q Did I ask this question, did you give this answer?

12 "Q And you also know that the alternative to that  
13 corporate reorganization is a liquidation of CEL by -- you  
14 liquidate the value, right?

15 "A I do."

16 A Yeah.

17 Q Okay.

18 A I do.

19 Q So you are aware that the alternative to the corporate  
20 reorganization proposed here is a liquidation, correct?

21 A I do.

22 Q Okay. If CEL were liquidated today, you agree with me,  
23 it wouldn't be worth anything, correct?

24 A Correct.

25 Q You didn't put a price on the speculative value for CEL



1 token here, did you?

2 A No, I didn't.

3 Q So it's your testimony that as of the petition date,  
4 the only remaining value for CEL is speculative value,  
5 correct?

6 A At that point, yes, correct.

7 Q And you didn't actually put a price or calculate a  
8 value for that speculative value, did you?

9 A I can't put a price (indiscernible) to the speculative  
10 value because the assessment is to look at the  
11 (indiscernible) and come to a valuation on the petition  
12 date. So (indiscernible) value based on the information  
13 that I had on that date, the speculative value would  
14 actually increase. Because they're not going to look at the  
15 all-time high.

16 During that period, I don't have information at that  
17 period that was available that said that CEL was not going  
18 to (indiscernible) was not going to issue (indiscernible)  
19 coins, or there was going to be no utility for CEL in any  
20 future. I can't go on information that came about after the  
21 petition date. I only can assess something based on  
22 information that someone else would have had at that same  
23 period.

24 Q Understood. Let's talk about the method that you did  
25 use. What you did is you took a 20-day trading window. You

1 averaged the closing prices from each day and you divided  
2 that average by the number of days, right?

3 A Correct.

4 Q You agree with me that 20 days isn't some industry  
5 standard. That's just a window you selected, correct?

6 A Correct. It's the theory of randomness, theory of  
7 numbers. So the more data points you can use, the more  
8 clarify you get on market movement. So I had to look for a  
9 period -- seven days I thought was too short, 14 days. But  
10 it's actually a random number. And the random number was  
11 the biggest number I could get where I could go to the  
12 market where I did not hit an issue with dislocated markets.  
13 Because you've got a double dislocated market here. So CEL  
14 is very hard -- and (indiscernible) the problem trying to  
15 get to the valuation. CEL is very unique. It's got a  
16 double dislocated market. It's got the Terra LUNA collapse  
17 and then it's got after that the (indiscernible), right? So  
18 you've got two things to look at. So I couldn't go any  
19 further in that data, go over 20 days. And I didn't want to  
20 go any less than 20 days. I was trying to get the area with  
21 good market representation. So I chose 20 days for that  
22 reason. So it's a random number, but it was the best number  
23 I could come up with to have a fair value (indiscernible)  
24 across as many days as possible.

25 Q Okay. You said a lot just there. I want to break it

1 down. You ended by saying that 20 days is a random number,  
2 correct?

3 A Correct.

4 Q And you also testified that it was a double-dislocated  
5 market, correct?

6 A Correct.

7 Q One of the reasons it was dislocated was the Terra LUNA  
8 collapse, correct?

9 A That's correct. We had the first instance -- yeah.

10 Q But you used trading data from after the Terra LUNA  
11 collapse, correct?

12 A I used trading data all the way from before to after.  
13 So I stopped -- so the analysis where I stop at is the  
14 petition date. So I did look at the data on top, but that's  
15 not for the value. Anything to the bottom of that I've  
16 seen. But again, to determine my value, I didn't need to go  
17 into more details. I needed to find a window which I could  
18 use to have a fair value. Because you can't get an exact  
19 value. There's no one in the world, it doesn't matter which  
20 specialist, which guy you bring in. It doesn't matter if  
21 it's (indiscernible) and it doesn't matter if it's anyone  
22 else and give you an exact value. The only way to come to a  
23 value is to have a compromise. So if you're not using a  
24 value assessment, there is no way to get a value.

25 Q Okay. Let's back up to your methodology. You've

1 effectively calculated a price average, right?

2 A I did.

3 Q And you agree with me that price is a different concept  
4 than value, correct?

5 A I do.

6 Q All right. You agree with me that market manipulation  
7 can artificially inflate the price of a cryptocurrency  
8 asset, correct?

9 A I do.

10 Q And because market making is endemic and ongoing in  
11 crypto, according to you the key question is now much of an  
12 impact that manipulation has, correct?

13 A I agree, correct.

14 Q In your view, it's close to impossible to differentiate  
15 between organic, legitimate price movements for a digital  
16 asset and movements based on manipulation, correct?

17 A That's correct.

18 Q And here you have no way to tell what part of the 71  
19 cent average you arrived at was organic versus manipulated,  
20 correct?

21 A I have a way to limit the damage because I have a scope  
22 of what they call market making window, which is between a  
23 one and five percent spread. So all I can do is reduce --  
24 in a case where you're coming to get a value in the crypto  
25 industry, you can't get a correct value, you're correct.

1 The only thing you can do is limit the outside influence on  
2 that coin. So there has to be a range of influence that  
3 you're willing to accept as being okay to use.

4 Now, a one to five percent spread is what I consider to  
5 be okay to use because it's the common standard across the  
6 board for marker making.

7 Q Okay. I just want to break that down. It's your  
8 testimony that you took what you consider to be the least-  
9 manipulated window of trading data, correct?

10 A Correct.

11 Q But even taking that and averaging it, sitting here  
12 today, you can't tell the Court what portion of the 71 cent  
13 price is attributable to manipulation, right?

14 A But I can't do that for any single coin on the market  
15 because every single coin has exactly the same problem. So  
16 arguing that CEL, that this is an issue for CEL is not  
17 different than arguing that BTC shouldn't have the same  
18 value as BCT. Because the market makers are used across the  
19 entire industry.

20 Because it's a common standard, like I said in the  
21 deposition, whenever we have to do a fair assessment, we  
22 can't just single one thing out. We have to look at the  
23 entire market. And we also have to look at the other coins  
24 and how they actually operate. If all the coins -- it's a  
25 common practice in the industry, we have to take that as

1 being a common practice. All we can do is limit the access  
2 or the influence from outside, but we have to accept it.  
3 Because you can't say that CEL has no value because it was  
4 market made and then go (indiscernible) that BTC has value,  
5 because BTC is also market made. So you have to compromise.  
6 You have to grade as -- as an assessment. I have to look at  
7 it and say to be fair, I have to look at the ranges, which  
8 is commonly known as the industry as being a safe standard  
9 of market making. So I choose under five percent. If it's  
10 over five percent, it tells me that there's some movement  
11 that moved it. If it's over ten percent, then I know that  
12 there's a market dislocation in that area. But I have to be  
13 fair to my assessment. I can't rule out CEL's value because  
14 CEL market makes and other people market make as well.

15 Q Okay. You said a lot there. But I think the gist of  
16 what you were saying is that because everyone is making the  
17 market in crypto, you've just got to take it as a given,  
18 right?

19 A It's the industry. If you're assessing a value in this  
20 industry, you have to understand how this industry  
21 functions. If you want to (indiscernible) a currency and  
22 you don't understand how the industry works, you can't  
23 assess the value. You can't come to a value.

24 Q Okay. I want to talk a little bit now about what you  
25 reviewed and what you didn't review.

1 A Got it.

2 Q You reviewed the data from your firm, NuGenesis,  
3 correct? Trading data.

4 A Correct. Correct, I did.

5 Q You reviewed coin market cap data, correct?

6 A Correct, we did.

7 Q You reviewed the Elementus report, correct?

8 A I did.

9 Q And those were the only three things that you  
10 personally looked at, correct, in preparing this report?

11 A No, I looked at -- my biggest thing that I used was the  
12 Max Galka supplementary declaration -- sorry, I'm very bad  
13 with names -- the Max Galka supplementary declaration and  
14 his assessment. I took Max -- sorry.

15 Q No, please. I looked at them, too. Those were the  
16 first things I actually assessed.

17 A You are aware that Max Galka is from Elementus, right?

18 Q I'm very bad with names. I memorize things just by  
19 people. I have so much information that I go through, and  
20 that's why (indiscernible) give you the figures. But I'm  
21 very bad with memorizing names (indiscernible). So Max  
22 Galka is how I remember that report.

23 Q Well, I'll call it the Galka report, then. You don't  
24 dispute the veracity of the information provided in the  
25 Galka report, correct?

1 A It depends -- can you word -- because I know you're  
2 saying veracity, but what we're discussing, there's a lot of  
3 things in the report I agree a hundred percent with. And  
4 there's a lot of things -- and there's other things I don't  
5 agree with. So Max's report, especially the supplementary  
6 report, is really well-written. I find an issue with a  
7 point that he brings up in his supplementary report, but I  
8 have no issue in the methodology he uses.

9 In fact, Max actually seems to use exactly the same  
10 strategy that I use in the same way I approach that. So  
11 although he calls it the dislocated market, the dislocated  
12 market then pushes you to a fair value assessment. Because  
13 if you use dislocated markets, especially if you're  
14 following that dislocated market theory, that means that  
15 that data can't be used because it's unfair to use it. So  
16 that pushes you into the range of actually looking at a fair  
17 assessment.

18 Now, I don't know what you guys call it. I can tell  
19 you what we do and how we assess it. But there's no  
20 difference between the way Max portrayed the data that I  
21 looked at. Max actually says that it's uncredited and it's  
22 dislocated. So when Max says that, I mean, there's no  
23 difference. I agree a hundred percent on that. That data  
24 is dislocated and it cannot be used. It's unfair to use  
25 that data.



1 Q Was it your testimony that it's unclear what veracity  
2 means when it comes to the information that's provided in  
3 the Elementus report?

4 A I said it's unclear what your intention is with that.  
5 (indiscernible) broke down the report, which sections.  
6 Because there's sections I agree with and the sections I  
7 don't agree with.

8 Q All right. Well, you don't dispute the veracity or  
9 accuracy of the information provided in the Elementus  
10 report, do you?

11 A Sorry, the information? No, I don't. I don't. I  
12 actually use that data. It's pretty good data.

13 Q And that data was foundational to your own analysis,  
14 correct?

15 A It was. It was very foundational to it.

16 Q All right. Now, you claim that your analysis delved  
17 deep, harnessing information from over a thousand distinct  
18 sources, correct?

19 A Correct.

20 Q And those are the sources we talked about earlier in  
21 the 200-plus page exhibit, spreadsheet attached to your  
22 report?

23 A Correct.

24 Q And that spreadsheet has events and weblinks, correct?

25 A Correct.

1 Q You did not check those source links, correct?

2 A No. Personally I don't check it.

3 Q You didn't open up a single one, correct?

4 A No. I wouldn't check. I have faith that my analyst  
5 would have done it for me. I just --

6 Q Is it -- go ahead.

7 A Yeah, I just take the descriptions on the side and then  
8 I just take the -- so they break it down -- they should have  
9 read it. I say they should have, right, because I don't  
10 want to lie to you and say they did everything perfect. I  
11 wasn't the (indiscernible) doing it and I don't want to lie  
12 to the Court.

13 So what they should have done, and I hope they did do,  
14 is actually go through all the links, check all the links,  
15 take the information, run it through artificial  
16 intelligence, get a summary of it, put the summary in the  
17 summary box so I can read the summary. That's what they  
18 should have done. If they haven't done it or they've missed  
19 something, I didn't check.

20 Q Right. So sitting here today, you don't know what they  
21 did or didn't do, fair?

22 A Yeah, that's very fair.

23 Q All right. Now let's talk about some of the things you  
24 did look at in preparing your report. You don't cite the  
25 examiner in your report at all, do you?

1 A No, because the valuation methodology I used, it wasn't  
2 necessary to (indiscernible) -- sorry, the examiner report.

3 Q But you would agree with me that nothing in your report  
4 specifically engages with or comments on the factual  
5 findings that the examiner offered, fair?

6 A That's fair. I can agree with you there's a lot of  
7 things missing in the report if I wanted to get into more  
8 detail. But they weren't relevant inside of my valuation.  
9 The only thing relevant in the valuation was a fair value  
10 assessment on petition date. So that's all I needed to  
11 have. (indiscernible) enough data to do that.

12 Q Well, part of that fair value assessment is determining  
13 when the market was manipulated, right?

14 A Yeah, but -- yes. But I'm going from my experience,  
15 and I might be wrong, but I'm just telling you because  
16 (indiscernible). But in my experience, I think I can tell  
17 when markets have been manipulate more than the standard  
18 manipulation that currently happens in the market. Because  
19 we are saying manipulated. We're not using the word market  
20 making. We're not using the word liquidity acquisition.  
21 We're not using the word (indiscernible). All of those are  
22 forms of market making. Market making itself is deceptive  
23 because most people don't understand how market making  
24 works. But it's a common practice. And without it, you  
25 can't actually hold the point value up.

1 Q Mr. Faraj, what was my question?

2 A (indiscernible).

3 Q All right. I'm just going to ask my question again.

4 It was a little bit simpler. It's are you aware that the  
5 examiner's report makes factual findings about Celsius'  
6 market manipulation? Yes or no?

7 A Yes.

8 Q Okay. And we talked about some of those during your  
9 deposition, didn't we?

10 A Yeah. I can't remember exactly everything, but yes.  
11 But if it's in there, it's in there.

12 Q It was like 48 hours ago, right? You know we talked  
13 about the examiner's report.

14 A Yeah. It was seven -- I had five to seven hours  
15 (indiscernible).

16 Q Sitting here today, you can't think of a single finding  
17 that the examiner made about market manipulation of the CEL  
18 token that you disagree with, correct?

19 A Not that I've seen anything to disagree with. Even in  
20 Max's report, there's nothing I've seen to disagree with in  
21 terms of that data.

22 Q All right. Well, even though you can't disagree with  
23 that, that hasn't stopped you from criticizing the examiner,  
24 has it?

25 A No. I did criticize the examiner's report. I

1 (indiscernible) that data.

2 Q Okay. Well, let's put up Celsius Exhibit 119, which is  
3 a series of tweets from you from February 2023.

4 A (indiscernible).

5 Q And let's go to PDF Page 2. I'm sorry, one second.

6 A Yeah, I remember. It says she should be locked up with  
7 the \$20 million. I remember.

8 Q Exactly. You write --

9 A I remember.

10 MR. MCCARRICK: And, Mr. Lopez, if you can control  
11 F and find it. If you control F "Locked up", it will come  
12 up.

13 BY MR. MCCARRICK:

14 Q Okay. You remember this. You did in fact tweet, "If  
15 you ask me, the examiner should be locked up as well. She  
16 stole \$20 million in my eyes." Correct?

17 A Correct.

18 Q And you also said that that report was "piss weak" and  
19 was a "repetitive, wasted document". That's what you said,  
20 didn't you?

21 A I did.

22 Q And, sir, sitting here today, you stand by that  
23 determination, don't you?

24 A I stand by any comment I make at any given point of  
25 time. So it's eight months ago. It's in February. And it

1 says that I believe -- and it (indiscernible), the \$20  
2 million assessment cost. Now, that's my personal belief and  
3 that's what I think. I mean, if it's wrong, it's wrong.  
4 But I don't want to lie to you and say I think anything  
5 otherwise.

6 Q Okay. Let's do this. Let's look at a different one of  
7 your tweets. Let's pull up Celsius Exhibit 114, which is a  
8 tweet from you on October 9th. And let's go to PDF Page 2  
9 and let's blow it up.

10 MR. MCCARRICK: And actually, Your Honor, we would  
11 move into evidence Celsius Exhibit 119.

12 THE COURT: All right. It's in evidence.

13 (Celsius Exhibit 119 entered into evidence.)

14 MR. MCCARRICK: And for Your Honor's reference,  
15 Page 11 is the tweet we were just looking at on the last  
16 one. Now we were on Celsius Exhibit 114, which is a tweet  
17 from Mr. Faraj on October 9th.

18 BY MR. MCCARRICK:

19 Q That's your tweet, correct?

20 A Correct. I remember it very well.

21 MR. MCCARRICK: Your Honor, we move Exhibit 114  
22 into evidence.

23 THE COURT: All right. It's in evidence.

24 (Celsius Exhibit 114 entered into evidence.)

25 BY MR. MCCARRICK:

1 Q All right. Do you see where you write here, "I was  
2 never pro-Alex. I would have loved to see Alex working on  
3 restoring the network." Do you see that?

4 A Yes, I do.

5 Q And that's Alex Mashinsky, correct?

6 A That's Mashinsky, correct.

7 Q And you are aware that he has been indicted, right?

8 A I wasn't aware he was indicted, but yes.

9 Q So this is the first time you're hearing that Mr.  
10 Mashinsky was indicted?

11 A Sorry. I thought that -- when you said  
12 (indiscernible), I thought it was (indiscernible). So yes,  
13 (indiscernible).

14 Q Okay. And the last sentence here you say, "It is also  
15 why I would love for them to give SBF a chance to fix  
16 things." Do you see that?

17 A Yes, I do.

18 Q And that's Sam Bankman-Fried?

19 A Yeah. And that's the guy who -- that was one of --  
20 sorry, (indiscernible) and one of the people that was most  
21 heavily hurt by Alameda Research. But it doesn't mean I  
22 still don't want SBF to try to fix the thing so most people  
23 get back maximum returns.

24 Q And in fact, you think that Mr. Mashinsky and Mr.  
25 Bankman-Fried should be offered advisor positions during the

1 reorganization process for each of the respective companies,  
2 correct?

3 A I think they should be there to try to fix the problems  
4 they caused.

5 Q Well, you think they should be board advisors, right?  
6 That's what you told me during your deposition.

7 A It's board advisor, if in any other capacity. That's  
8 for me. I believe that someone who caused the problem, who  
9 knows the industry back to front, who knows what they caused  
10 and how they caused it, who can help fix the problem, they  
11 should be fixing the problems they caused.

12 Q Okay. So I just want to ask you this one final  
13 question, which is how you view the market and how it should  
14 go. On the one hand, you think that the examiner should be  
15 locked up for issuing a \$20 million piss-weak report, but  
16 Mr. Mashinsky and Mr. Bankman-Fried should be appointed  
17 board advisors to the companies during the reorganization  
18 process?

19 A Yeah, if you want to say it like that, I'll say it  
20 again. I do believe that I would like to -- and this is my  
21 personal opinion -- see anyone that causes an issue inside  
22 of the space, who understands the space very well, who can  
23 optimize return back to the people who they hurt, to go back  
24 and actually help them.

25 Now, with the examiner's report -- and again, eight



1 months ago when I made this statement, I would have made  
2 this statement. I don't make statements that I don't mean.

3 Q Okay. So the answer is yes, you stand by that the  
4 examiner should be locked up but Bankman-Fried and Mashinsky  
5 should be on corporate boards, right?

6 A When you say the examiner should be locked up, you know  
7 it's said in a (indiscernible) way. It wasn't yeah, go to  
8 jail, put her in jail. But I will agree with you just so we  
9 don't have to argue.

10 Q Okay.

11 MR. MCCARRICK: That's all, Your Honor.

12 THE COURT: Thank you. Any other examination?

13 MR. COLODNY: None from us, Your Honor.

14 THE COURT: All right.

15 MR. KIRSANOV: Your Honor?

16 THE COURT: Yes, Mr. Kirsanov?

17 MR. KIRSANOV: (indiscernible)?

18 THE COURT: Yes, very briefly.

19 MR. KIRSANOV: Thank you.

20 CROSS EXAMINATION OF HUSSEIN FARAJ

21 BY MR. KIRSANOV:

22 Q Mr. Faraj, good morning or I guess good night over  
23 there.

24 A Good morning.

25 Q When did you first connect with Mr. Davis?

1 A I don't know the exact date. I spoke to  
2 (indiscernible) probably when FTX first collapsed. I was on  
3 -- I don't want to lie to the Court. I don't want to give  
4 wrong dates. Probably on Twitter space -- I mean, I was  
5 teaching people exactly what Sam Bankman-Fried  
6 (indiscernible). I was explaining to the reporters exactly  
7 how it happened or explaining the (indiscernible). And I  
8 met a lot of people. And I was investigating CEL at the  
9 same time. I just don't know the dates. But I don't want  
10 to lie to you and give you the wrong date.

11 Q Are you familiar with Dogecoin?

12 A I am familiar with Dogecoin.

13 Q Does Dogecoin have any use cases?

14 A No, not really.

15 Q Does Dogecoin --

16 A (indiscernible).

17 Q Does Dogecoin have speculative value?

18 A It has a lot of speculative value.

19 Q Are you familiar with Elon Musk?

20 A Yes, I do.

21 Q If Elon Musk tweets about Dogecoin, would this be a  
22 dislocation event?

23 A It would be. Under the terms -- this is why we say you  
24 have to take the parameters of what it means for a  
25 dislocated market. So any external factor which manipulates

1 the market, you have to then rule it out because it's a  
2 dislocated market. But if Elon Musk says, you know what,  
3 I'm going to maybe accept it for my Teslas. What would  
4 happen is the market makers in the industry will also  
5 (indiscernible) that to pump up the market. Now, that  
6 becomes a dislocated market.

7 Q Mr. Faraj, what is your current employment again?

8 A I am the CEO of NuGenesis Network. I'm also head of  
9 R&D for MetaLabs Global. I am the CEO of Advantage Group  
10 Australasia. I am the -- I've got plenty of positions.  
11 Strategic analyst for (indiscernible) Australia. I am the  
12 head of the United Shia Islamic Foundation. I'm the head of  
13 the United (indiscernible). I'm co-founder of Regenerate  
14 Earth. I am strategic partner. So there's many things, but  
15 I don't think it's relevant in this.

16 Q Would it surprise you to learn that the CEL token  
17 raised in price after petition date?

18 A No, it wouldn't. Because what would happen is -- okay,  
19 well, the reason why I take it out isn't because it won't  
20 raise in value, it's because the rise in value would be  
21 based on the same -- sorry, the (indiscernible) of the  
22 dislocated data. So no, it wouldn't. I mean, it would go  
23 higher. And this is why I say speculative value in the  
24 crypto industry can actually be worth more than intrinsic  
25 value if someone thinks that that coin will actually

1 (indiscernible) back to the full-time high. So I'll give  
2 you an example.

3 If someone didn't know that CEL was not going to be  
4 real on July the 13th, just as an example, and they saw that  
5 it went to 60 cents but it had all-time high of \$5 or \$6, in  
6 that person's mind, the speculative value is that that coin  
7 has the potential to return to that all-time high. Every  
8 coin, you know, that grows (indiscernible) have that up and  
9 down and up and down. So at that point, the speculative  
10 value actually would make it valued to some people more than  
11 the extrinsic -- so the extrinsic value at the time, because  
12 it doesn't have extrinsic value anymore. So you have to  
13 rule out the extrinsic value. And so when I get really  
14 tired, my English gets a little bit bad, so please forgive  
15 me. The speculative value then (indiscernible).

16 Q Would it surprise you to know that even today CEL token  
17 currently trades?

18 A No, it wouldn't. And even if everything closes down,  
19 it wouldn't surprise --

20 MR. MCCARRICK: Objection.

21 THE COURT: Sustained. There's been an objection  
22 sustained.

23 THE WITNESS: Your Honor, no problem.

24 BY MR. KIRSANOV:

25 Q Mr. Faraj, are you familiar with FTX?

1 A I am, very well.

2 Q Are you familiar with Alameda Research?

3 A I am, very well.

4 Q Have you ever been employed by FTX or Alameda Research?

5 A No, I haven't.

6 Q Have you ever received seed funding from Alameda

7 Research or FTX?

8 A No, I haven't.

9 MR. KIRSANOV: Your Honor, if I may ask to provide  
10 the witness the testimony of Caroline Ellison which I  
11 submitted yesterday?

12 THE COURT: No. Ask your next question and finish  
13 up.

14 BY MR. KIRSANOV:

15 Q Would selling billions of dollars' worth of bitcoin  
16 dislocate the bitcoin market?

17 MR. MCCARRICK: Objection.

18 THE COURT: Sustained. Last question.

19 BY MR. KIRSANOV:

20 Q Does your report assessment take market manipulation  
21 into account?

22 A It does. Because we put market manipulation under --  
23 sorry, dislocated market. So anything that --

24 THE COURT: Thank you for your questions, Mr.  
25 Kirsanov.

1 Anybody else wish to examine?

2 MR. DAVIS: Yes, I do, Judge. This is Otis Davis.

3 THE COURT: Go ahead, Mr. Davis. Briefly.

4 CROSS EXAMINATION OF HUSSEIN FARAJ

5 BY MR. DAVIS:

6 Q Good morning, Mr. Faraj, good afternoon. My name is  
7 Otis and I'll be asking you questions.

8 Do you have Max Galka's supplemental declaration in  
9 front of you, which is at Docket 3646?

10 A Give me a second. The supplementary report?

11 Q Yes, the supplementary report.

12 A (indiscernible).

13 Q Do you agree with Max Galka's supplementary declaration  
14 that the value of CEL not being 81 cents at the petition  
15 dates?

16 A I do.

17 Q Do you agree (indiscernible) 2011 in Max Galka's  
18 supplemental declaration (indiscernible) Mr. Galka claims  
19 there was a dislocated market and the difficulty in  
20 determining an exact value?

21 A I do.

22 Q Do you agree with Point 12 of the Max Galka  
23 supplemental declaration?

24 A Yes, I do. A hundred percent.

25 Q Do you agree with point 13?

1 A This has two parts to it. So I do and I don't. I  
2 don't believe that all the parties (indiscernible) at the  
3 time. And I know it says that a reasonable investor. But  
4 in the crypto space, I mean, you can't assume every single  
5 person is a reasonable investor and knows everything to do  
6 with everything. So I do believe -- that one is -- I  
7 believe it's correct in terms of the extrinsic value. All  
8 right? There's no issue with that. A hundred percent  
9 correct. But when intrinsic value ends, (indiscernible)  
10 value starts. And so I don't believe that -- you can't  
11 (indiscernible) at zero. I mean, just let's put that  
12 completely aside. It's impossible for a zero assessment  
13 because that means someone (indiscernible), so it has to  
14 have value. If someone is paying for something, it has  
15 value. And again, if you think that there's a restructure  
16 or something is going to happen -- we just spoke about it  
17 before, then (indiscernible) value. So I can't say that  
18 having a zero or having value is there, but I can agree that  
19 if someone was a sophisticated investor, they may have  
20 thought at that point (indiscernible). Most people will  
21 just say (indiscernible) and, you know, no. That's a  
22 difficult one.

23 Q How about point 14?

24 THE COURT: I don't understand your question, Mr.  
25 Davis. Ask another question.

1 BY MR. DAVIS:

2 Q Do you agree with point 14 in the Max Galka  
3 declaration?

4 A The 0.35?

5 Q Yes.

6 A Okay. This is a really good question. Yeah, if Your  
7 Honor would allow me, I would like to answer this. It's a  
8 very critical question, actually. I just read --

9 THE COURT: I don't know what he's reading from.  
10 I don't have it.

11 MR. DAVIS: It's the Max Galka --

12 MR. MCCARRICK: Mr. Davis, could you read point 13  
13 into the record?

14 THE COURT: Read it into the record and then you  
15 can ask your question.

16 MR. DAVIS: Give me one second, Your Honor. My  
17 computer just froze. Give me one second.

18 THE WITNESS: Do you want me to read it?

19 THE COURT: Could you read it out loud, Mr. Faraj?

20 THE WITNESS: Of course I can, Your Honor. "After  
21 the (indiscernible) approximately 94 percent of CEL tokens  
22 in Celsius' possession and not able to be withdrawn, CEL  
23 token supply and demand was virtually disrupted, as  
24 described in my expert report. It is in my opinion that  
25 after that date, the pause in the market of CEL tokens was



1 severely dislocated and the movement in that token markets  
2 price was not indicative of its value." Okay, this is a  
3 really, really important thing, point 14. Because what he  
4 is saying is the dislocated market means he has to move away  
5 from the data that was dislocated. The only thing that's an  
6 issue is the dislocated market never finished when he says  
7 it finished. So the dislocated market actually goes and  
8 never finishes all the way because you've got a double  
9 dislocation. But it actually goes up to the -- so the 10th  
10 of June is still a dislocated market. So you can't use the  
11 0.355 and you can't use those (indiscernible) because you're  
12 still sitting on a 20 percent volume to market cap ratio.  
13 So you're sitting at 10.61 percent on the 10th of June.  
14 You're sitting at 18.48 percent on the 11th of June. So  
15 you're actually still in dislocated markets.

16 So, yes, what he did was completely correct. But he  
17 actually stopped short. He should have continued to go  
18 until the dislocated market had subsided. The dislocated  
19 market has reduced on the 9th of June. So he can't use the  
20 10th, 11th, 12th, 13th, 14th, 15th, because the 10th and  
21 11th are still a part of the dislocated cycle.

22 So what he's saying is true, that you can't use that  
23 data. But what he has done -- and I don't know how he's  
24 missed it. Because I read his report. He actually knows  
25 what he's talking about. So when he goes into the

1 dislocated markets, he has to go the whole way. He can't  
2 choose to stop when it's still under dislocation. So the  
3 10th of June and the 11th of June, you have a 10.6  
4 (indiscernible) volume to market cap ratio. That's a  
5 dislocated market. Now, the dislocated market is just a  
6 (indiscernible). It's a 4.77 percent. Now, that's within  
7 the boundaries of a one to five percent spread.

8 So if you drop down to 9th of June, you are now in the  
9 safety of --

10 MR. MCCARRICK: (indiscernible).

11 THE COURT: Finish your answer, Mr. Faraj.

12 BY MR. DAVIS:

13 A Sorry, yeah. If you drop down that one to the 9th of  
14 June, you're actually in the safe zone. So if you want to  
15 argue that dislocated market exists, it's true. What Max is  
16 saying is a hundred percent spot-on. The only thing, like I  
17 said, you can't stop short. If you are arguing a dislocated  
18 market, you have to take all the data. You can't stop too  
19 short because it's the lowest point.

20 THE COURT: Three more questions, Mr. Davis.

21 Three more questions.

22 BY MR. DAVIS:

23 Q Thank you. How about point 15? And I will read it  
24 into the record.

25 A That's --

1 Q Go ahead, sir.

2 A I just spoke about that. So I just read -- because I  
3 was reading the thing. So that's the 3.55. So I've already  
4 answered that.

5 Q How about point 16? How about point 16?

6 A Do you want me to read it or do you want to read it  
7 into the --

8 THE COURT: Mr. Faraj, why don't you read it  
9 slowly?

10 BY MR. DAVIS:

11 A I will. "First, approximately one month passed between  
12 the (indiscernible) petition date. During the  
13 (indiscernible) time, the news about Celsius was  
14 overwhelmingly negative with the public questioning Celsius'  
15 solvency. Representation by the company and the future of  
16 the platform, I cannot (indiscernible) an economic, rational  
17 reason for the value of CEL token would have increased from  
18 the pause to the petition date in response to that  
19 information in proper (indiscernible) markets."

20 And the next one says, "Second, even before the pause,  
21 the market for CEL token was already showing the traditional  
22 indicia of the dislocated market. There was a significant  
23 information asymmetry regarding Celsius' financial condition  
24 and it's --" sorry, my screen is very small, "-- provision  
25 cell token transactions. Major shock to the cryptocurrency

1 market with the collapse of several other coins."

2 So what he's saying here, this is actually one of the  
3 most -- I'm really glad you put this one up. Okay. So what  
4 he's saying is that even before the pause date, there was a  
5 dislocated market. Now, what he is referring to is the 10th  
6 and 11th of June. The pause date was on the 12th. So he  
7 actually says he agrees that that's a dislocated market. So  
8 I don't know why he has actually referred to it being of  
9 value.

10 If he had raised that area before, even before the  
11 pause, the market for CEL token was already showing the  
12 traditional indica of a dislocated market, which it is. The  
13 dislocated market starts from the 10th of June. So you have  
14 to -- if you are arguing the dislocated market methodology,  
15 you have to strike out 10th, 11th, 12th (indiscernible).  
16 You have to strike (indiscernible). You can't argue it and  
17 then use the same -- you can't say you have to have -- this  
18 is a dislocated market, but you know what? On the 10th of  
19 June it's the cheapest point. It's 30 cents. So I'm going  
20 to go with that and I'm going to leave it there. You have  
21 to strike it out because it still is a dislocated market.

22 He agrees here that it's a dislocated market. So he  
23 actually agrees with you on the same point.

24 THE COURT: Two more questions, Mr. Davis.

25 MR. DAVIS: Thank you, Judge.

1 BY MR. DAVIS:

2 Q How about point 18?

3 A "My experience, when a market for an --"

4 THE COURT: You have to read it -- stop.

5 THE WITNESS: Sorry.

6 THE COURT: Read it slowly into the record and  
7 then I'll let you answer a question.

8 BY MR. DAVIS:

9 A "In my experience, when a market for an asset or  
10 security becomes dislocated, the market price for an asset  
11 is typically above the extrinsic value of the asset. One  
12 example of this phenomenon was the GameStop short squeeze of  
13 January 2021 when the GameStop stopped trade at far above  
14 the intrinsic value of a dislocated market." Yes, okay.

15 Q Do you agree with that?

16 A I do agree with that. I do agree with --

17 THE COURT: Next question, Mr. Davis.

18 BY MR. DAVIS:

19 Q Point number 19. Last one.

20 A Okay. (indiscernible) ascribe a specific value  
21 (indiscernible) on petition date (indiscernible) my  
22 experience trading a financial instrument, and especially  
23 trading in dislocated markets, (indiscernible) a price of  
24 the CEL token on the petition date, I would have declined  
25 because I think the CEL token was most likely worthless at

1 the time and have seen no probable support for it being  
2 worth more than zero zero at the time."

3 Okay. There's two parts to this. And I'll answer as  
4 quick as I can, because I know (indiscernible) Your Honor  
5 for the long answers.

6 You can't have a zero value. So there's no such thing  
7 -- as long as something is trading and someone is buying  
8 something, there's no such thing as a zero value. You can  
9 just (indiscernible). Anything that's being traded and  
10 anything that converts from one value to another so it  
11 becomes speculative cannot have a zero value.

12 And the second part (indiscernible) petition date. He  
13 is correct. On the petition -- you can't ascribe a specific  
14 value because it is a -- sorry, a dislocated market. So the  
15 only way to do it is a fair value assessment. The only way  
16 to do a fair value assessment is to strike out the entire  
17 period which is dislocated.

18 Now, the issue here is if you argue this one too hard  
19 and you keep saying the dislocated market, the value of CEL  
20 increases the more you actually look at the dislocated  
21 market. So the fair value assessment makes a fair value  
22 instead of keep going further down. And I don't have a lot  
23 of time to explain it. But if you look at a dislocated  
24 market and then you rule in a double dislocated market, the  
25 value of CEL becomes much higher. Because every single time

1 we go away from the Terra LUNA crash, the value of CEL  
2 (indiscernible). You've got to be very careful when you're  
3 (indiscernible). So the fair value assessment is the safest  
4 and fairest way for everybody.

5 THE COURT: Thank you for your testimony. Does  
6 anybody else wish to ask any questions?

7 MR. ABREU: Judge, Arthur Abreu, pro se creditor.

8 THE COURT: Go ahead, Mr. Abreu.

9 CROSS EXAMINATION OF HUSSEIN FARAJ

10 BY MR. ABREU:

11 Q Can you open the first expert report by Mr. Galka,  
12 document 3580? It's the first expert report.

13 A Yeah, one second. So reports. Okay, (indiscernible).

14 Q And you go to Page 35 of the PDF of the document is 38,  
15 figure 13, which represents the trading volume of CEL token  
16 pre and post-pause dates.

17 A Yes.

18 Q Do you see the Y axis where it says one?

19 A Yes, I do.

20 Q Do you (indiscernible) the market dislocated  
21 (indiscernible) volume? So this figure refers to the volume  
22 of CEL. Do you spot where the LUNA event happened?

23 A My screen is really, really small because I've got the  
24 thing up. So if you want to ask me a question, I'll be able  
25 to answer it, but I -- my screen is really tiny.

1 MR. ABREU: Judge, could we share it on the screen  
2 if it's possible?

3 THE COURT: No.

4 BY MR. ABREU:

5 Q Okay. So I will refer to this. On this figure, you  
6 have two (indiscernible) that go over one after the 2022 May  
7 event. Do you see those two specks?

8 A Yes. I can see it, yes.

9 Q And then there is a (indiscernible) where the volume  
10 kind of retraces to which has been in the past, correct?

11 A Correct. But it's still a dislocated market because  
12 you don't have enough volume on there. So with dislocated  
13 markets, if you are (indiscernible) the dislocated market --  
14 and I know -- I've got to be fair on both assessments. A  
15 dislocated market isn't just --

16 Q That's --

17 THE COURT: Mr. Abreu, don't interrupt his answer.  
18 Go ahead, Mr. Faraj.

19 BY MR. ABREU:

20 A It's very important just because -- okay, anything that  
21 happens post-petition in a dislocated market, what that  
22 means is that the circulating supply is now being reduced.  
23 The circulating supply being reduced therefore actually  
24 changes the dynamics of the original market. When you  
25 change the dynamics of the original market, you are actually



1 inside of -- you are still within what we call the  
2 boundaries of a dislocated market.

3 THE COURT: Two more questions, Mr. Abreu.

4 BY MR. ABREU:

5 Q Are you aware at this time the supply was not  
6 (indiscernible)?

7 A Pardon?

8 Q Are you aware if the supply of CEL was locked in this  
9 period?

10 A Even if they were locked -- and again, the fact that  
11 you can't access -- the fact that the CEL can't be accessed  
12 by so many people -- I think it's 294 million -- look, I  
13 don't have it in front of me. I think it's 294 million CEL  
14 that was locked up. The minute that it gets locked up, you  
15 can't then look at it as a fair value assessment. Now, you  
16 can look at other assessment. But once you lock up that  
17 liquidity, it's no longer fair value. Because there's not -  
18 - look at it this way. Let's just say the other people  
19 don't believe what the first people thought and they just  
20 wanted to get rid of it. It changes the dynamic of the  
21 market. So then the dislocated market theory still applies.

22 Q No, no, my question is related. Do you see the  
23 timeline which you offered your methodology here to  
24 calculate the average price on this figure? Can you spot it  
25 through this figure?

1 A Which figure? I don't know what I'm looking at.

2 Q So on the document of Mr. Galka, Page 38 of the  
3 document, there is a Figure 13, correct?

4 A Figure 13.

5 Q 38 of the document and 45 of the PDF.

6 A Oh, sorry, 45 of the PDF. Okay. My apologies. Yes.

7 Q So do you see -- you use a methodology which goes --  
8 does an average price in a period of time. Like you say, 20  
9 days.

10 A Correct.

11 Q Do you see a period of time here clearly in this  
12 figure?

13 A Honestly, I apologize. I know what you want me to do.  
14 My screen is too small. I don't want to give a wrong  
15 assessment. I can't make a mistake. So I can't see it. I  
16 can't answer your question.

17 Q You cannot see the --

18 THE COURT: One more question, Mr. Abreu.

19 BY MR. ABREU:

20 A My screen is very, very small. I can't see it.

21 Q Okay. Let's go to page -- of this same document, Page  
22 36 of the document, which is the page -- which is the 43 of  
23 the PDF. So 36 of the document and 43 of the PDF.

24 A I've got it.

25 Q Do you see Paragraph 147?

1 A Yes (indiscernible).

2 Q So let me read it. "The (indiscernible) shows the time  
3 series of daily price returns of BTC, ETH, which is  
4 Ethereum, FTT, HEX, and CEL token from the start of 2022 to  
5 the petition date."

6 A Yes, I can see that.

7 Q So on the charts do you see the charts referring to HEX  
8 and FTT?

9 A I see BTC, Ethereum. Okay, can you tell me is that  
10 figure 12? Which figure? Because I can't see where it says  
11 HEX.

12 Q (indiscernible) the chart below. So it's the following  
13 page.

14 A Yeah, I know, but BTC, Ethereum, and CEL. Where's HEX?

15 Q Exactly. The report alludes to this, but it does not  
16 mention anything related to this. There are more  
17 discrepancies, but for the time constraints of the Court are  
18 requiring -- there are very -- there are numbers  
19 inconsistent between the Galka report of things that he  
20 talking that he never refers to. So that's my point, just  
21 to say that there are omissions --

22 A I read the report -- sorry. Can I answer that just  
23 quickly? I read the report. The issue is even him -- no  
24 one is perfect. So even when you go through his report, I  
25 mean, the supplementary report he did, he actually looks at

1 the right methodology in his first report. But it's very  
2 hard putting everything in a report. I mean, it doesn't  
3 matter who you are and it doesn't matter how much time you  
4 have. So there's going to be things missing. I mean, this  
5 market -- if I was to do a proper report and I had time,  
6 this would be a 5,000 page report. This is talking about  
7 complete market dynamics. So -- and I'm not trying to  
8 protect anybody, but he actually done a really good job. He  
9 just made a mistake when it came to where he ended the  
10 proposition of the dislocated market. And I don't know why  
11 he made that mistake, because that's a very crucial mistake.  
12 But everything else inside of here, assessments and  
13 methodologies are actually really well written.

14 THE COURT: Thank you -- Mr. Abreu, thank you for  
15 your questions.

16 Does anybody else wish to examine the witness?

17 MR. FRISHBERG: I have a couple questions, Your  
18 Honor.

19 THE COURT: Mr. Frishberg, go ahead.

20 MR. FRISHBERG: Thank you. I will try to be as  
21 brief as I can.

22 CROSS EXAMINATION OF HUSSEIN FARAJ

23 BY MR. FRISHBERG:

24 Q Dogecoin is the first meme coin, correct?

25 A I'm not sure if it's the first meme coin that ever

1       existed. I don't have that kind of knowledge. But it was  
2       created as a joke and it is a meme coin, but --

3       Q       It's the first widely-accepted meme coin?

4       A       Yeah, it's been very well adopted.

5       Q       Is one of the reasons bitcoin has so much value is  
6       because it was the first widely-adopted cryptocurrency?

7       A       It wasn't -- bitcoin wasn't because it was the first  
8       widely-adopted cryptocurrency. It's because it changed the  
9       status from its asset class. And I don't mean it from a  
10      financial perspective, I mean it from a functionality  
11      perspective. BTC as technology is actually very poor  
12      technology. Even Satoshi's code and even the way Satoshi  
13      puts the -- the way he designs it for the complexity. The  
14      issue is not bitcoin. Bitcoin became a store of value. So  
15      when you change something from a function of a  
16      cryptocurrency or for a trade, whatever you create, and you  
17      try to store a value, it actually changes the whole  
18      (indiscernible) of what that currency is. So bitcoin is a  
19      different class. Right? So bitcoin is a store of value.  
20      You can't compare it to a cryptocurrency.

21      Q       Okay. Is one of the reasons dogecoin has such a large  
22      following is because it was extensively promoted by Elon  
23      Musk?

24      A       Yes and no. To be honest with you, when we did our  
25      data assessments on the (indiscernible) movement -- because,

1 remember, I have to train neighbors. And I know it's our  
2 software and I know it's our AI, but -- okay. So one thing  
3 you've got to realize, it's not Elon musk moving the market  
4 himself. There's factors behind it. There's a lot of  
5 market makers, market manipulators, market movers. Now,  
6 what they do is they know that when Elon Musk tweets, that  
7 they can actually move the market and (indiscernible) value  
8 and (indiscernible) value (indiscernible). So there's a  
9 level of market manipulation in the market that goes up.

10 Is he the catalyst for the movement? Yes. Is he the  
11 reason it's moving? He's only one part of that whole  
12 mechanism.

13 THE COURT: Mr. Frishberg, do you have any  
14 questions about the CEL token? This is not really relevant  
15 to what we're doing here.

16 BY MR. FRISHBERG:

17 Q Is the cell token affected in the same way by Elon  
18 Musk?

19 A I am not too sure. I haven't heard Elon Musk tweet  
20 about or say something about the CEL token. But yes, it  
21 would be. Look, it's not a matter of him tweeting. You've  
22 got to understand the dynamics of the market, right? If you  
23 own your own exchange, anyone that has -- like I said, we've  
24 developed our own exchanges (indiscernible) for over a year.  
25 So once you understand how they actually work, market moving

1 is -- it's not a one fit all. So someone says something  
2 doesn't mean he moved it. But there is then an opportunity  
3 for people in the background who have liquidity to actually  
4 move the market. So there's a series of things. It's very  
5 complicated to explain it in five minutes. And I don't want  
6 Your Honor to get angry with me, so I don't want to answer  
7 too long.

8 THE COURT: Last two questions, Mr. Frishberg.

9 BY MR. FRISHBERG:

10 Q This will be the two questions. Is Dogecoin the only  
11 cryptocurrency that Tesla accepts as a payment?

12 A I'm not aware of -- listen, I really -- ask me about  
13 technology, I'll tell you whatever you want. I don't follow  
14 Elon Musk and what he accepts in terms of currencies. I  
15 mean, Dogecoin is one -- Elon Musk makes a lot of money when  
16 he is tweeting or -- I can't speculate because I don't know  
17 exactly how he spends his money, but I assume that he is  
18 buying and selling crypto. But that's not related --

19 THE COURT: Mr. Frishberg, do you have any more  
20 questions about CEL?

21 BY MR. FRISHBERG:

22 Q I have one question. Do you see CEL having any utility  
23 as a currency and does anyone accept it as a payment?

24 A It's not up to me to see it because the valuation  
25 crisis it not about its future, it's about what it was at

1 the petition date. So if you ask me to value the currency  
2 as of today knowing the information we have now, then it's  
3 got no value unless someone wants to use it for something  
4 else. But if you ask me to value something based on a  
5 petition date, I can't take the future into consideration.

6 Q Thank you.

7 THE COURT: Anybody else have any questions?

8 MR. CREWS: Yes, Your Honor. I have a few.

9 THE COURT: Go ahead, Mr. Crews.

10 MR. CREWS: This is Cam Crews, pro se.

11 THE COURT: Go ahead.

12 CROSS EXAMINATION OF HUSSEIN FARAJ

13 BY MR. CREWS:

14 Q How are you? In your opinion, did the Terra LUNA  
15 dislocation event disproportionately affect CEL token or all  
16 cryptocurrencies?

17 A It was all cryptocurrency. That was a major dislocated  
18 event. So what happens whenever you've got a major event --  
19 you've got a major and a minor event, right? So the CEL  
20 token is what we classify as a minor event. It's a minor  
21 dislocation. A major event is like the FTX collapse. It's  
22 like Terra LUNA collapse. It's like any other major  
23 collapse. When you have a major event, it doesn't affect  
24 one coin, it affects the entire system.

25 Q Thank you. In your opinion, did the Celsius pause



1 dislocation event disproportionately affect CEL token or all  
2 cryptocurrencies?

3 A Okay. To answer honestly, I would have to look at the  
4 market all the way through except sentiment follows. So  
5 what that means is to give you a safe answer without giving  
6 you a wrong answer, sentiment from one collapse can follow  
7 to another collapse. So if someone (indiscernible) money on  
8 Celsius, that person or someone next might panic and not  
9 want to spend money or buy crypto on another platform.

10 So the rolling on effect from a dislocated market,  
11 minor or major, does roll on to other platforms.

12 Q And did the Celsius pause cause CEL tokens to be locked  
13 on the Celsius platform?

14 A So once they locked those coins, that actually changes  
15 -- it's a dislocated event. But even -- I'll give you an  
16 example. It's not just the lock. Insider trading, insider  
17 selling. Anything that comes in earlier that people that --  
18 let's just say an insider had information (indiscernible)  
19 and that was used to shift the market, that becomes a  
20 dislocation event. So the only thing you can do to be fair  
21 is to strike out all dislocated events.

22 Q You accepted 95 percent of the circulating supply of  
23 CEL token was locked on the Celsius platform as of the  
24 pause?

25 A Yeah, I think 245 million I think we said before. And

1 once that happens, it becomes a dislocated market. So  
2 regardless if you -- I can't argue that later on the values  
3 are proper. Because even if I take the maximum supply  
4 (indiscernible) five dollars. So I can say that it had  
5 value. But it doesn't mean it had value under a non-  
6 dislocated market value. So once -- if you argue dislocated  
7 value, you have to go to fair assessment. You can't have  
8 the (indiscernible). So if I argue that there's a  
9 dislocated market and I need to go to fair value assessment,  
10 I have to go to fair value assessment. And this is why I  
11 had to use the methodology I used. And if I argue there was  
12 a dislocation, then I can argue that after the pause date,  
13 after the petition, CEL value actually went up to \$4.60.  
14 That means was -- was CEL worth \$4.60? And you can't argue  
15 that because there is a dislocated market there. So you  
16 can't pick and choose.

17 Q And just for clarification, that number you read out,  
18 that was a dollar value?

19 A I think it was four -- I'm just saying off the top -- I  
20 think it was four dollars -- when I did an assessment -- I  
21 don't have it in front of me. But when I did an assessment,  
22 I realized that post-petition date, that CEL went up to two,  
23 three four dollars, \$4.60. Now, that's a dislocated market.  
24 So you have to wipe it out. You can't accept it as  
25 (indiscernible) assessment.

1 THE COURT: Thank you for your questions. Anybody  
2 else have any questions?

3 MS. DOW: Yes, Your Honor. Sharon Dow, pro se  
4 creditor.

5 THE COURT: Go ahead, Ms. Dow.

6 MS. DOW: Yes, good day. There seems to be  
7 someone else who is --

8 THE COURT: Yeah. Anybody else, close your  
9 microphone please.

10 CLERK: They've been muted, Judge. It was Bob  
11 (indiscernible).

12 THE COURT: All right. Cut him off. Go ahead,  
13 Ms. Dow.

14 MS. DOW: Thank you, Your Honor.

15 BY MS. DOW:

16 Q Mr. Faraj, so today are you sharing with us or giving  
17 us all of this plethora of information as a lay witness  
18 opinion or are you holding yourself out as a qualified  
19 expert valuer who is in the U.S. federal courts?

20 A I will let the Court decide. Because I've never done  
21 this in court, and I wouldn't even know how to honestly  
22 answer that question you just gave me. I can tell you that  
23 I am extremely knowledgeable and you can ask me anything you  
24 wanted and I'll give you the exact details that you wanted.  
25 I've done years of R&D. R&D means I actually practice this

1 stuff. I don't have a qualification, but I can guarantee  
2 you nobody will know what I know. Now, I've owned my own  
3 exchanges. I've owned my own market makers. But I don't  
4 have an answer to it because I don't know. I'm here to give  
5 evidence to help out so the judge can -- or anyone  
6 understand how this thing functions. But I don't know in  
7 what term that is.

8 Q So what is the purpose of the work product that you are  
9 submitting? Have you chosen the exact purpose of the  
10 valuation?

11 A I have. I came down to a fair value assessment based  
12 on all the stuff we just discussed. And the fair value  
13 assessment I took into consideration the dislocated market.  
14 I chose a period of time which had the least affected area.  
15 And then I looked at marginal spreads. There's a good  
16 spread between there. And then I came to a fair value  
17 assessment of 71 cents.

18 Q So here and in your testimony (indiscernible) have you  
19 expounded any deductions over -- based on the fact pattern  
20 representing --

21 MR. MCCARRICK: Objection.

22 THE COURT: Sustained. Next question.

23 MS. DOW: And then just one more question. But  
24 give me one moment, Your Honor, please, to collect it.

25 BY MS. DOW:

1 Q Okay. So, Mr. Faraj, just final confirmation here.  
2 You are asking to be considered an expert valuator yet this  
3 is your first time ever preparing a work product or  
4 testimony and have not been through any of the typical  
5 training for U.S. federal -- appearing in U.S. federal  
6 court.

7 A Okay. Let me answer that and I'll -- and please, Your  
8 Honor, excuse me for answering this. And I thank you so  
9 much for your patience today.

10 When it comes to expertise, the expertise isn't a piece  
11 of paper (indiscernible). Expertise in this industry  
12 requires hands-on. You've got to understand the dynamics of  
13 this industry. So if my expertise -- if you want to say am  
14 I an expert, I do believe I am one of the biggest experts or  
15 the -- whatever in English you want to say, expert in the  
16 field. I don't think anybody you're going to find is going  
17 to have the information that I had. But I can answer any  
18 question you have in regards to any type of valuation in  
19 crypto, and I can answer any question you have with  
20 methodologies. I can answer any question you have in  
21 technology.

22 Now, is that enough to be an expert? I would think it  
23 is enough to be an expert. But that's not up to me; that's  
24 up to the judge. So I respect whatever the judge says and  
25 whatever decision he makes is his decision.

1 MR. LICARI: (indiscernible).

2 THE COURT: Mr. Licari -- cut him off. Deanna,  
3 cut him off.

4 Any interruptions in this proceeding will not be  
5 tolerated.

6 Ms. Dow, do you have any last questions?

7 BY MS. DOW:

8 Q So just to clarify that you feel you are qualified in  
9 the area, but you have not been qualified as an expert  
10 valuator in the federal court, is that correct?

11 A In the federal court, no. But if you need peer  
12 references or peer reviews -- I mean, you've just heard  
13 today, I mean, if hearing me today is not enough to  
14 understand that I am an expert in the field, then I don't  
15 know what I can tell you. I mean, it's the judge's call.  
16 It's not my decision.

17 Q Yeah. I'm asking the questions. Thank you very much.

18 THE COURT: Thank you, Ms. Dow. Anybody else have  
19 any questions?

20 MR. MENDELSON: Yes, Your Honor. Eric Mendelson,  
21 pro se.

22 THE COURT: Go ahead, Mr. Mendelson.

23 MR. MENDELSON: I will be very brief. And thank  
24 you for your time as usual.

25 CROSS EXAMINATION OF HUSSEIN FARAJ

1 BY MR. MENDELSON:

2 Q Mr. Faraj, did you get paid for this report? Did you  
3 receive any compensation for it?

4 A I didn't get paid. I received nothing in return. I  
5 don't want anything in return. I want to help people  
6 understand this data. More than that, I don't want anything  
7 in return.

8 Q Are you aware that Elementus was paid for their  
9 valuation report?

10 A Yes, but I don't want to comment. The last time I  
11 commented about someone making such a large, vat amount of  
12 money, I got criticized. So I really don't want to look  
13 like -- and I speak my mind. So I don't want to be in a  
14 position where I'm going to say something and someone is  
15 going to criticize me for it.

16 Q All I asked was were you aware if they got paid or not.

17 A Yes, I am aware they got paid.

18 Q Do you enjoy working for free or providing reports for  
19 free?

20 UNIDENTIFIED SPEAKER: Objection.

21 THE COURT: Sustained.

22 BY MR. MENDELSON:

23 Q Okay. Mr. Faraj, what was your motivation for  
24 providing the report without...

25 A I really love this industry. I've been in it -- one of

1 the first crypto architects. I've been in this industry for  
2 so long. I've designed over 138 chains. I've looked after  
3 over 500 people. I've trained over a hundred people on the  
4 stuff that we've been discussing. I love this industry.  
5 Right? It's not that I agree with every principal in the  
6 industry, but I love this industry.

7 If there's a position that I can get and I can help  
8 someone, I will be there to help them. You can ask anyone  
9 who knows me throughout this industry.

10 THE COURT: Any last questions, Mr. Mendelson?  
11 Mr. Mendelson, are you still there?

12 Anybody else wish to question the witness?

13 MR. DALHART: I would just like to have one  
14 question. I've never participated in the past.

15 THE COURT: Okay. Just identify --

16 MR. DALHART: If I am allowed to.

17 THE COURT: Yeah. Just identify your name,  
18 please.

19 MR. DALHART: My name is David Dalhart.

20 THE COURT: Okay. Go ahead, Mr. Dalhart.

21 CROSS EXAMINATION OF HUSSEIN FARAJ

22 BY MR. DALHART:

23 Q I just have one quick -- in your opinion, would it be  
24 just easier to give everyone some CEL tokens and if they  
25 want to sell them, fine. If they can't sell them, that's



1 fine. Would it be simple or am I just oversimplifying it.

2 UNIDENTIFIED SPEAKER: Objection. Objection.

3 MR. DALHART: Oh, sorry.

4 THE COURT: Sustained. Any other questions, Mr.  
5 Dalhart?

6 MR. DALHART: No, thank you. That was my only  
7 question.

8 THE COURT: Thank you, Mr. Dalhart. Anybody else  
9 wish to cross-examine?

10 MR. LU: Hi. My name is Jason Lu. I am a  
11 creditor.

12 THE COURT: Go ahead, Mr. Lu.

13 CROSS EXAMINATION OF HUSSEIN FARAJ

14 BY MR. LU:

15 Q Mr. Faraj, you just said you have designed over 138  
16 chains. Is that correct?

17 A Designed, yes.

18 Q And could you name of any of them? Are any of them  
19 successful or ones that we would have heard of?

20 A We do R&D. So we're a research and development  
21 company. And we design concepts on chains. We're also  
22 developing some of the largest infrastructure right now. So  
23 we're doing major projects including the (indiscernible),  
24 we're doing (indiscernible) the -- I could send you a list.  
25 We've got heaps. I mean, when it comes to infrastructure,

1 the (indiscernible).

2 THE COURT: Let's not do advertising. Okay, Mr.  
3 Faraj?

4 THE WITNESS: Sorry, Your Honor.

5 THE COURT: That's okay.

6 BY MR. LU:

7 Q Well, I've been in this industry a long time, too.  
8 And, frankly, I've never heard of you or any of these chains  
9 that you've mentioned. So if you're using the basis that  
10 you've designed 138 chains to show that you're an expert,  
11 perhaps maybe you could clarify that --

12 THE COURT: Mr. Lu, I'm going to cut you off  
13 because it's not a proper question. I don't know where you  
14 are. Mr. Faraj is in Australia. I don't know if you know  
15 everybody all around the world. Do you have any other  
16 questions, Mr. Lu?

17 MR. LU: No, that's it. Thank you.

18 THE COURT: Thank you very much. Anybody else  
19 wish to cross-examine?

20 All right. Any recross from anybody in the  
21 courtroom?

22 MR. MCCARRICK: T.J. McCarrick, Kirkland & Ellis,  
23 on behalf of the debtors. Nothing for the debtors. We  
24 would just like to re-note the Debtor's and the Committee's  
25 joint Daubert motion, which I understand Your Honor has

1 taken under submission subject to --

2 THE COURT: Yeah. We're going to talk about that  
3 in a minute and any final briefing. I'm not going to rule  
4 from the bench on it.

5 MR. MCCARRICK: Understood.

6 THE COURT: All right. No one else in the  
7 courtroom appears to want to cross-examine.

8 Mr. Faraj, thank you very much for your testimony.  
9 I hope you get some sleep. I know you said you've been up  
10 for a long time. Tell me again where in Australia are you?

11 THE WITNESS: We're in Sydney.

12 THE COURT: Sydney, okay. All right. Thank you  
13 very much.

14 THE WITNESS: Thank you so much, Your Honor. I do  
15 appreciate you letting me get on the stand. Thank you so  
16 much. I hope I helped you out. Bye bye.

17 THE COURT: All right. Do the Debtor or the  
18 Committee wish to call any rebuttal witnesses?

19 MR. MCCARRICK: The Debtors do not, Your Honor.

20 THE COURT: All right. So all parties have rested  
21 at this point. The evidence is closed. All right.

22 So let's talk about proposed findings of fact and  
23 conclusions of law and any additional closing briefs. I  
24 certainly have the briefs, but there have been some changes,  
25 movements in the evidence, and that sort of thing.

1 MR. KOENIG: Good morning, Your Honor. Chris  
2 Koenig, Kirkland & Ellis, for the Debtors.

3 So, Your Honor, the last time we spoke about  
4 briefing, you indicted you didn't want briefing. But during  
5 the colloquy yesterday you suggested maybe there were some  
6 limited topics.

7 THE COURT: Let me put it this way. There's a lot  
8 of briefing that's been done already. You know, cases take  
9 twists and turns as they go along. If you feel there are  
10 any issues that you want to address in the brief, you can.  
11 But I'm not telling you which issues I want to -- I mean,  
12 the one issue that's come up I think throughout multiple  
13 times -- and I think you even stood and said that's a good  
14 question -- was the treatment of collateral with  
15 (indiscernible) I think was -- I would have to go back in my  
16 notes.

17 MR. KOENIG: Right, Mr. Bronge.

18 THE COURT: Yes.

19 MR. KOENIG: Whether the collateral is the  
20 property of the borrowers or property of Celsius.

21 THE COURT: Correct.

22 MR. KOENIG: We addressed that issue in Version 9  
23 in our confirmation brief. But you raised that -- Mr.  
24 Bronge raised Version 7 was not addressed in our brief. So  
25 perhaps we'll submit something just limited on that.

1 THE COURT: I think you ought to limit --  
2 obviously the briefing is very extensive. There were  
3 proposed findings of fact that were done earlier. We now  
4 have a record. You can either take what you had submitted  
5 before, and if you believe that's sufficient, add citations.

6 When is the transcript supposed to be completed?

7 MR. KOENIG: We've been getting transcripts on a  
8 rolling basis I would say every 24 hours.

9 THE COURT: Okay.

10 MR. KOENIG: So we will be prepared to submit  
11 proposed findings of facts and conclusions of law I would  
12 say by the end of this week. Maybe it's most helpful to  
13 work backwards from closing.

14 THE COURT: Sure.

15 MR. KOENIG: I know Your Honor has a very busy  
16 schedule, especially in November. We are already scheduled  
17 to have an omnibus hearing next Tuesday the 24th. I don't  
18 know if that's too soon for Your Honor. We would be  
19 prepared to present at that hearing. But if you would  
20 rather schedule a different date before -- I think you said  
21 you had a hearing in November.

22 THE COURT: Yeah. That's a moving target, too.

23 MR. KOENIG: So we're happy to work with Your  
24 Honor's schedule and sort of work backwards from there.

25 THE COURT: Hold on. Too much paper. Just give

1 me a moment.

2 Let me -- I must have left it on my desk. Let me  
3 just -- everybody stay seated and we'll come back in. Okay?  
4 It will just be a moment.

5 So tell me when would the Debtor and Committee be  
6 prepared to submit their proposed findings of fact and  
7 conclusions of law?

8 MR. KOENIG: Your Honor, for the Debtors, we would  
9 be prepared to do it by the end of this week.

10 MR. COLODNY: Your Honor, I'm envisioning  
11 submitting one joint document.

12 THE COURT: Are you going to submit joint proposed  
13 findings.

14 MR. COLODNY: That's what I was envisioning, Your  
15 Honor. And I believe we can work on that.

16 MR. KOENIG: Yes.

17 THE COURT: Most beneficial.

18 MR. KOENIG: Yes. The Debtors and the Committee  
19 will submit one joint proposal.

20 THE COURT: And you would do whatever additional  
21 briefing you're going to do all by...

22 MR. KOENIG: Your Honor, we would submit that at  
23 the same time. I think it would be very limited, frankly.  
24 We've got enough paper in this case.

25 THE COURT: All right. The Debtors and the

1 Committee shall submit proposed findings of fact and  
2 conclusions of law and any additional brief by Monday --  
3 hold on, let me make sure that's right. Friday, October  
4 20th, 5:00 p.m.

5 Any objectors submit proposed findings of fact and  
6 conclusions of law and any closing briefs by Friday, October  
7 27 at 5:00 p.m. Closing argument Monday, October 30 at 2:00  
8 p.m. I'm squeezing it in with a lot of things.

9 MR. KOENIG: We appreciate it, Your Honor. A  
10 couple of just housekeeping questions. For openings, you  
11 issued an order and we were supposed to submit how long we  
12 wanted for closing argument. Will you be doing something  
13 similar?

14 THE COURT: I will enter it in a similar...

15 MR. KOENIG: Okay. The other item I would note is  
16 you mentioned -- I'll just wait a moment for the siren.

17 We mentioned during openings that one of the  
18 conditions precedent to emergence, not to confirmation, is  
19 an SEC approval of a Form 10 registration. We may at the  
20 same -- we are continuing to discuss with the SEC.  
21 Hopefully we can make some progress between now and closing  
22 argument. We may ask for a status conference just to update  
23 you and the rest of the parties on this important issue at  
24 the time of closing, which I think you said was the 30th.

25 THE COURT: Okay. So let me ask a couple other

1 questions. Were you able to resolve things with the  
2 Consumer Privacy Ombudsman?

3 MR. KOENIG: Not quite yet, but we're close.

4 THE COURT: I think there were -- I don't have the  
5 list in front of me, but I think there were some open issues  
6 with the U.S. Trustee that you were endeavoring to resolve.  
7 Has there been any progress on that?

8 MR. KOENIG: Yes. I believe we are now resolved.  
9 I don't want to speak for the U.S. Trustee, but...

10 MR. BRUH: I think we're still --

11 THE COURT: You have to identify yourself, Mr.  
12 Bruh.

13 MR. BRUH: Mark Bruh for the United States  
14 Trustee. I think we're trying to schedule a follow-up call.  
15 We have been exchanging information, Your Honor. I know  
16 exculpation and release are some of the issues we're  
17 discussing with the Debtors and a discrete issue regarding  
18 exculpation with the Committee. And that's where we stand  
19 on that.

20 THE COURT: Are you within striking range of a  
21 resolution of those issues?

22 MR. BRUH: I hope so, Your Honor. One of the  
23 issues Your Honor did raise was the disclosure of various  
24 individuals in the release provisions and --

25 THE COURT: It's clear that there were some people



1 that ought to be specifically identified and in other  
2 instances many categories, but it needs more of a  
3 definition.

4 And I expressed this before. I don't want open  
5 litigation issues about who gets a release, who is getting  
6 exculpated, that sort of thing. It's got to be -- it needs  
7 to be pre-cleared.

8 MR. BRUH: We'll do our best, Your Honor.

9 THE COURT: Okay.

10 MR. KOENIG: We've had very productive  
11 discussions. I think we're close.

12 THE COURT: Are there other open issues that are  
13 still being discussed, negotiated?

14 MR. KOENIG: I think it's the ADR procedures are  
15 close but not final. I'm looking at Mr. Colodny.

16 MR. COLODNY: We're going to send them back today,  
17 Your Honor.

18 MR. KOENIG: I think that that's the other open  
19 issue.

20 MR. COLODNY: And then there are a couple changes  
21 to I think litigation administrator agreements and some of  
22 the other corporate documents. So there will likely be  
23 another plan supplement filed where we can include the list  
24 of released parties and other (indiscernible).

25 THE COURT: Mr. Bruh?

1 MR. BRUH: Yes, Your Honor. Mark Bruh for the  
2 United States Trustee. Also, the substantial contribution  
3 applications --

4 THE COURT: We'll push those off.

5 MR. BRUH: To November 30th at the confirmation.  
6 I just wanted to apprise the Court.

7 MR. KOENIG: I think that's all that's open, Your  
8 Honor.

9 CLERK: Judge?

10 THE COURT: Yes, Deanna.

11 CLERK: Sorry to interrupt. There is the SVB  
12 omnibus hearing on the 30th at 2:00. Do you want it at the  
13 same time or do you want --

14 THE COURT: Hold on. Let me just look. I thought  
15 I had brought out a whole list of -- give me just a moment.

16 We'll move that date, Deanna. We'll talk after.  
17 We'll move the date for the SVB omnibus hearing which is  
18 scheduled for 2:00 on October 30th. We'll move that.

19 CLERK: Okay. Great. Thank you.

20 THE COURT: Thank you, Deanna. All right.  
21 Anything else we need to talk about today?

22 MR. KOENIG: Nothing from the Debtors. Thank you,  
23 Your Honor. We'll wait for your order.

24 THE COURT: I appreciate all the effort to get  
25 this done promptly. See you all soon. We are adjourned.

1 (Whereupon these proceedings were concluded at  
2 11:25 AM)  
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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing  
transcript is a true and accurate record of the proceedings.

A handwritten signature in cursive script that reads "Sonya M. Ledanski Hyde".

Sonya Ledanski Hyde

Veritext Legal Solutions

330 Old Country Road

Suite 300

Mineola, NY 11501

Date: October 19, 2023

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[manipulation - memorizing]

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